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December 12, 1972

FILE NO. S-544

CONSTITUTION:  
Fees and Salaries  
Per diem increase

Honorable Philip G. Reinhard  
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Winnebago County  
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Court House Building  
Rockford, Illinois 61101

Dear Mr. Reinhard:

I have your recent letter wherein you state:

"At the request of the President of the Board of Commissioners of the Winnebago County Forest Preserve District, your opinion is sought concerning the effect of a Resolution passed by the Board of Commissioners of such district purporting to increase the per diem compensation paid to District Commissioners to \$25.00 per day.

The boundaries of the Winnebago County Forest Preserve District are co-extensive with the boundaries of the County. As provided by law in such case, the affairs of the District are conducted by the County Board members sitting as the Board of Commissioners.

of the District. Under special rules of order and procedure adopted by the District, a single eight-member Executive Committee is appointed by the Board of Commissioners to conduct the day to day business of the District between monthly meetings of the full Board. For several years the Executive Committee has met approximately twice each month to discharge its duties, which have included developing and closing five substantial land acquisition projects, construction of an eighteen-hole golf course and club house and the operation of fifteen district forest preserves. On January 15, 1966, a Resolution was adopted by the Board of Commissioners setting the amount of compensation to be paid to Commissioners for services rendered to the District at a per diem rate of \$15.00 per day. Except for rare special meetings of the full Board of Commissioners, such compensation is received only by members of the Executive Committee for meetings of that Committee.

At the present time, the committee structure of the County Board of Winnebago is composed of six standing committees. Each committee of the County Board meets approximately twice each month. The County Board Members receive per diem compensation for Board and Committee meetings attended at a per diem rate of \$30.00 per day.

At its organizational meeting held May, 1972, the newly elected County Board allocated committee assignments to Board Members on the seven committees (6 - County Board, and 1 - Forest Preserve) in a manner which would assure that all Board Members would serve, as nearly as possible, on an equal number of committees. This was done in an effort to equalize the total yearly compensation received by all Board Members.

At a meeting of the Board of Commissioners of the Forest Preserve District held on May 9, 1972, the Board adopted a Resolution which, among other things,

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fixed the per diem compensation to be paid Commissioners for services rendered to the District, at a rate of \$25.00 per day. A copy of that Resolution is enclosed. This amount is the maximum fee provided in Section 3(a), Chapter 57 1/2, Illinois Revised Statutes, 1971. This action was taken after May 1, 1972, the date upon which the Commissioners of the District had commenced their terms of office as Members of the County Board. Prior to its passing out of existence on April 30, 1972, the former Board of Supervisors, sitting as Commissioners of the Forest Preserve District, took no action to determine the amount of per diem compensation to be received by Forest Preserve Commissioners after May 1, 1972.

The May Resolution of the new Board of Commissioners was taken for the following reasons: (1) To more adequately compensate Commissioners, principally the members of the Executive Committee, for the comparatively lengthy meetings of that Committee, and (2) to equalize the total yearly income received by all members of the County Board.

Your opinion relative to the following specific questions will be appreciated:

1. Does the Resolution adopted May 9, 1972, fixing Commissioners' compensation at a per diem rate of \$25.00 per day, constitute a prohibited increase in the salary of an elected officer during his term of office under the provisions of Section 9(b) of Article VII of the 1970 Illinois Constitution?
2. The former Board of Commissioners, which was composed of the County Board of Supervisors that ceased to exist on April 30, 1972, failed to take any action to determine the amount of compensation to be received by Commissioners after May 1, 1972. In view of this failure to act, was the new Board of Commissioners

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authorized to adopt the enclosed Resolution determining the amount of such compensation?

3. If it is your opinion that the new Board of Commissioners was without authority to determine the amount of compensation its members were to receive, what is the amount of compensation Commissioners may now receive for services rendered to the District?
4. If not repealed, will the Resolution adopted May 9, 1972, authorize payment of per diem compensation in the amount of \$25.00 per day to Commissioners whose terms of office as County Board Members commence on the first Monday in May, 1972, and each two years thereafter?"

Section 9(b) of article VII of the 1970 Constitution of the State of Illinois provides:

"An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

In the debates to the Sixth Illinois Constitution Convention, Delegate Davis addressed the convention in regard to a proposed amendment to section 9(b) (supra) that included appointed officers within its scope. Delegate Davis stated:

"Mr. President and ladies and gentlemen, this problem bothers me because there are quite a few officers of local special government units that are appointed. I have in mind, for example, the trustees of the Bloomington-Normal Sanitary

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District, that I happen to know about, who are paid a salary. On the other hand, they have nothing to say about what salary they are paid. That's fixed by law. They have no control over it.

And then we get into the gray-shaded area of people who are, perhaps, officers with some, at least, discretionary authority to set policy, like a city manager, who may have to be given a raise. He's appointed actually for good behavior, and he is retained normally during good behavior; and sometimes it's necessary to raise his pay in order to keep him there in the city. You may even have to raise it in the middle of a month in order to do that.

It seems to me that none of these appointed officers have any control over the salary or pay which they receive - I don't know of a single instance where that would occur - and that therefore, it's probably safer to not include them in the category of elected officers who, in many instances, would have some control or a voice in respect to the salaries or pay which they receive."

Vol. 4, Sixth Ill. Const. Con., Verbatim Transcripts, p. 3410.

It therefore appears, that the intent of the delegates to the Constitutional Convention in adopting section 9(b) (supra) was to prevent an elected official from voting himself a salary or pay increase.

Section 1 of article VII of the 1970 Constitution of the State of Illinois provides in part:

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"Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."

Section 3a of "An Act to provide for the creation and management of forest preserve districts" provides in part:

" \* \* \* In case the boundaries of any such district are co-extensive with the boundaries of any county, city, village, incorporated town or sanitary district, the corporate authorities of such county, city, village, incorporated town or sanitary district shall have and exercise the powers and privileges and perform the duties and functions of the commissioners provided for herein and in such case no commissioner shall be appointed for such district. \* \* \*"

Ill. Rev. Stats., 1971, ch. 57 1/2, par. 3a.

Section 3a of "An Act to provide for the creation and management of forest preserve districts" further provides in part:

" \* \* \* The members of a county board of a county under township organization and members of a county board of a county not under township organization who were elected prior to July 1, 1965, who also act as commissioners of a forest preserve district in counties having a population of 1,000,000 or less may receive for their services as commissioners of a forest preserve district a

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fee to be fixed by such board but not to exceed \$25 per day which shall be in full for all services rendered on such day, plus not more than 15 cents per mile, as fixed by the board, for each mile necessarily traveled in attending meetings of the board of such district, plus any expense incurred while, or in connection with, carrying out the business of such district outside the boundaries of such district, payable from the forest preserve district treasury. \* \* \*

Ill. Rev. Stats., 1971, ch. 57 1/2, par. 3a.

The first inquiry is whether the Resolution of May 9, 1972, fixing the compensation of the forest preserve commissioners at a per diem rate of \$25.00 violates section 9(b) of article VII of the 1970 Constitution of the State of Illinois. This Resolution, in my opinion, does constitute a prohibited increase in the salary of an elected officer of a unit of local government during the term for which he is elected. The Winnebago County Forest Preserve District constitutes a special district, and, therefore, comes under the definition of a "unit of local government" as provided in section 1 of article VII of the 1970 Constitution of the State of Illinois. Forest preserve districts are considered separate municipal corporations even though their territory and officers are identical to those of the county. Peabody v. Forest Preserve District, 320 Ill. 454.

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There may be some question as to whether such a commissioner is "elected" to the board of commissioners of the forest preserve district. However, where the forest preserve district is coextensive with the county, the elected county board members serve as forest preserve commissioners. Therefore, they hold this office by virtue of their being an "elected" officer. Furthermore, section 3a of "An Act to provide for the creation and management of forest preserve districts" provides in the case of the forest preserve district being co-extensive with the county that "\* \* \* no commissioner shall be appointed for such districts."

As stated above, section 9(b) (supra) was adopted to preclude an elected officer from voting a salary or pay increase to himself.

Therefore, the Resolution adopted May 9, 1972, by the County Board sitting as the Board of Commissioners of the Forest Preserve District, cannot take effect for this term of the County Board because the increase is contrary to section 9(b) of article VII of the Illinois Constitution of 1970.

You secondly inquire whether the failure of the previous



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board to act would allow the present board to set this increased rate of compensation. Section 3a of "An Act to provide for the creation and management of forest preserve districts" authorizes the Board of Commissioners to fix the per diem. Therefore, there is no question that the new board has the authority to set a compensation rate. However, they are limited constitutionally during this term to the \$15.00 per diem, which was in effect for the previous board. I believe these remarks also answer your third question.

Finally, you want to know if the Resolution is not repealed, what effect it will have. The increased per diem clearly cannot go into effect during this term of office of the present County Board. The present Board of Commissioners, however, has the authority under section 3a to vote an increased per diem for the Board of Commissioners for the succeeding term.

Therefore, in my opinion, section 9(b) of article VII of the 1970 Constitution of the State of Illinois prohibits an increased per diem from taking effect during this term of office for the Board of Commissioners of the Winnebago County Forest Preserve District.

Very truly yours,

A T T O R N E Y G E N E R A L