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SPRINGFIELD

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FILE NO: 85-025

JUDICIAL SYSTEM:
Impact of Legislation
Dividing a Judicial Circuit

Richard A. Cowen, Chairman
State Board of Elections
1020 South Spring Street
Springfield, Illinois 62708

Dear Mr. Cowen:

I have your letter wherein you pose several questions pertaining to the implementation of Public Act 84-1030, effective November 20, 1985. As you know, Public Act 84-1030 amends section 1 of "AN ACT relating to the circuit courts" (Ill. Rev. Stat. 1983, ch. 37, par. 72.1) to divide the former twelfth judicial circuit, which consisted of the counties of Will, Kankakee, and Iroquois, into two new circuits. Under Public Act 84-1030, the twelfth circuit is reconstituted to

consist solely of Will County, and the twenty-first judicial circuit, composed of the counties of Iroquois and Kankakee, is created. You first inquire whether any new circuit judgeships will be created by the restructuring of the former twelfth circuit, and if so, to which circuit they will belong.

Section 2 of "AN ACT relating to circuit courts" (Ill. Rev. Stat. 1983, ch. 37, par. 72.2) provides as follows:

> "Circuit judges shall be elected at the general elections and for terms as provided in Article VI of the Illinois Constitution. Ninety-four circuit judges shall be elected in the Circuit of Cook County and 3 circuit judges shall be elected in each of the other circuits, but in circuits other than Cook County containing a population of 230,000 or more inhabitants and in which there is included a county containing a population of 200,000 or more inhabitants, or in circuits other than Cook County containing a population of 270,000 or more inhabitants, according to the last preceding federal census and in the circuit where the seat of State government is situated at the time fixed by law for the nomination of judges of the Circuit Court in such circuit and in any circuit which meets the requirements set out in Section 2a of this Act, 4 circuit judges shall be elected in the manner provided by law. * * *
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> (Emphasis added.)

According to the 1980 Federal census, the new twelfth circuit, consisting of Will County, has a population of 324,460 inhabitants, while the counties of Iroquois and Kankakee have a population of 32,976 and 102,926 inhabitants, respectively,

fixing the population of the twenty-first judicial circuit at 135,902. Therefore, pursuant to section 2 of "AN ACT relating to circuit courts", it is my opinion that the twelfth circuit is to have four circuit judges elected on a circuit-wide basis, and the twenty-first circuit is to have three circuit judges elected on a circuit-wide basis. Since the former twelfth circuit had four circuit judges elected on a circuit-wide basis, the enactment of Public Act 84-1030 has occasioned a net increase of three judgeships.

In determining the circuit or circuits to which the new judgeships will belong, it is first necessary to resolve the question of what, if any, impact Public Act 84-1030 will have upon the four sitting judges of the former twelfth circuit previously elected on a circuit-wide basis. Section 11 of article VI of the Illinois Constitution provides as follows:

> "No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change." (Emphasis added.)

It is clear that a judge must be a resident of one of the constituent counties of the circuit which selected him or her, and it is equally clear that a change in the boundaries of a circuit, such as the division of an existing circuit into two

new circuits, will not cause the tenure of an incumbent judge, including the judge's right to seek retention (Ill. Const., art. VI, § 12(d)), to change or otherwise be affected. (See Ill. Ann. Const. 1870, art. VI, § 15, Historical and Practice Notes, at 142 (1964); see also G. Braden and R. Cohn, the Illinois Constitution: An Annotated and Comparative Analysis 368 (1969).) Accordingly, the tenure of the four judges elected from the former twelfth circuit as a whole is not affected by the adoption of Public Act 84-1030. The terms of office of the four judges in question have not been altered, and at the conclusion of his current term of office, each judge may seek retention in the circuit in which he sits if he is otherwise qualified.

With the division of the former twelfth circuit, it is obvious that the judges in question must be assigned to one of the two new circuits. This situation is analogous to the possible results of legislative redistricting where a member of the General Assembly may find his or her residence redistricted out of the district which he or she has previously represented. Subsection 2(c) of article IV of the Illinois Constitution addresses this situation by allowing a candidate for the General Assembly to run from any district which contains a part of the district in which he or she resided at the time of the redistricting. It is my opinion that

section 11 of article VI should be construed to produce a comparable result. Because the four judges in question were originally elected by the voters of Will, Kankakee, and Iroquois Counties, the electorate of both the new twelfth circuit and the new twenty-first circuit selected the judges. Accordingly, it is my opinion that each of the four judges chosen by the electorate of the former twelfth circuit on a circuit-wide basis may elect in which one of the two new circuits he will sit. Of course, each judge must reside in the circuit he elects to serve or establish residency therein, and, since the creation of the two new circuits by Public Act 84-1030 became effective November 20, 1985, such election should be made immediately.

Currently, three of the judges in question reside in Will County, and one resides in Kankakee County. Consequently, if all of the four judges elected on a circuit-wide basis from the former twelfth judicial circuit elect to sit in the circuit in which they maintain their residences, it appears that the new twelfth circuit will have one judgeship open and that the new twenty-first judicial circuit will have two additional judgeships which will eventually be filled by election on a circuit-wide basis. On the other hand, if one or more of the four judges elected on a circuit-wide basis from the former twelfth circuit decide to establish residency in the new

circuit which will not encompass their current residences, these calculations will vary depending on how the judges exercise this option.

You next inquire whether Judge John E. Michela will be a judge of the new twelfth circuit, or a judge of the new twenty-first circuit. It has been suggested that Judge Michela must move to the new twelfth circuit to preserve his judicial tenure. I find no support for such a conclusion and believe that it would defeat the purpose behind section 11 of article VI of the Illinois Constitution.

As you know, Judge Michela, who currently resides in Kankakee County, is one of the four judges of the former twelfth circuit elected on a circuit-wide basis. As such, it is my opinion that Judge Michela may elect in which circuit he will sit. Whatever his choice, his term of office and his right to run for retention are unaffected. As stated above, if Judge Michela elects to sit in the twenty-first circuit, there will be an additional judgeship to fill in the new twelfth circuit, but if he elects to sit in the twelfth and none of the other judges elected from the former twelfth circuit as a whole chooses to sit in the twenty-first circuit, the twenty-first circuit will have three judgeships to be filled by circuit-wide election.

You next inquire regarding Judge Michael A. Orenic, who resides in Will County, and who was originally elected from

the former twelfth circuit. You have advised that Judge Orenic has filed for retention in the 1986 election and ask if he will run only in Will County. On the basis of the foregoing analysis, it is my opinion that Judge Orenic may run for retention in the 1986 election either in the new twelfth judicial circuit, which consists only of Will County, or in the new twenty-first judicial circuit, which consists of Kankakee and Iroquois Counties. Judge Orenic has the option of running for retention in either of the new circuits, but, of course, if he chooses to seek retention in the new twenty-first judicial circuit, he must establish residency in that circuit.

Your final question relates to the resident judges. Specifically, you ask from which circuit or county Judge Patrick M. Burns, a resident circuit judge of Kankakee County, who has filed for retention in 1986, will run for retention. Section 2 of "AN ACT relating to vacancies in the office of judge" (Ill. Rev. Stat. 1983, ch. 37, par. 72.42) provides that each county shall have a specified number of resident judges dependent upon the population of the county. Each county will have one or more resident judges irrespective of the circuit to which it belongs, the population of the circuit, or alteration of circuit boundaries. Subsection 12(d) of article VI of the Illinois Constitution provides that retention elections shall be "in the circuit for Circuit Judges". Accordingly, it is my

opinion that the positions of the resident judges of Will, Kankakee, and Iroquois Counties are wholly unaffected by the adoption of Public Act 84-1030, and, therefore, Judge Burns, a resident judge of Kankakee County, will run for retention only in Kankakee and Iroquois Counties.

Very truly yours,

ATTORNEY GENERAL