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500 SOUTH SECOND STREET

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62706

May 5, 1975

FILE NO. S-894

COUNTIES:

**Duty of County Clerk to
Appoint Deputy Registrar**

Honorable Robert G. Gammage
State's Attorney
DeWitt County
P. O. Box 245
Court House
Clinton, Illinois 61727

Dear Mr. Gammage:

I am in receipt of your letter wherein you have requested my opinion regarding an interpretation of section 4-6.2 of the Election Code. (Ill. Rev. Stat. 1973, ch. 46, par. 4-6.2.) That section provides in its pertinent paragraph:

"If the county clerk determines to appoint deputy registrars as provided in this Section, he shall select deputy registrars in such manner that the convenience of the public is served, giving due

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consideration to both population concentration and area. There shall be not less than 2 deputy registrars for each 10,000 population, or fraction thereof in each township, road district or ward. Deputy registrars shall be selected so that there are an equal number of deputy registrars from each of the 2 major political parties in each township, road district or ward. Any qualified elector in the county, including clerks of townships, road districts, cities, villages and incorporated towns or their duly authorized deputies, shall be qualified to serve as a deputy registrar; provided, however, deputy registrars shall be appointed from lists furnished and certified to by the Chairmen of the respective County Central Committees of the 2 major political parties except when the lists are insufficient as provided in this section."

As I understand the situation in your county, the county clerk has appointed one deputy registrar in each township. That deputy is from the same political party as the county clerk. Your specific question asks whether the county clerk is required to appoint a deputy registrar from the opposite political party.

The answer to your question is clear from a reading of the statute in question. Once the clerk decides to appoint deputy registrars there are two qualifications placed upon such appointments. "There shall be not less than 2 deputy registrars

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for each 10,000 population or fraction thereof in each township, * * *." Secondly, "deputy registrars shall be selected so that there are an equal number of deputy registrars from each of the 2 major political parties in each township * * *." (emphasis added.)

While the word "shall", appearing in a statute does not have a fixed meaning, it ordinarily operates to impose a duty which may be enforced. This is especially true where the public interest is involved. (People ex rel. Crowe v. Marshall, 262 Ill. App. 128.) Where the language is mandatory, an action for mandamus may be brought to compel a public official to make appointments to public office. (People ex rel. Sanghan v. Swalec, 22 Ill. App. 2d 374.) The duty imposed on a public officer of appointing managerial election officers to be selected from the several political parties is so far ministerial that a mandate may issue to compel him to appoint a member of one of the parties, where he has arbitrarily refused to appoint any member of such party but has appointed other persons, all of whom are members of the opposite party. 25 Am. Jur. 2d, Elections, sec. 43.

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I do not believe that the language of section 4-6.2 of the Election Code leaves any room for interpretation. The county clerk should appoint two deputy registrars in each township in DeWitt County. The two major political parties must be equally represented in these appointments.

Very truly yours,

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