



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 06-005

JUDICIAL SYSTEM:
Residency Requirements for
Resident Judges After
Circuit-wide Retention Election

Mr. William A. Sunderman
Chairman
Judicial Inquiry Board
100 West Randolph, Suite 14-500
Chicago, Illinois 60601-3233

Dear Mr. Sunderman:

I have your letter inquiring whether "resident judges," who are circuit court judges initially elected from a particular county or subcircuit within a judicial circuit, must continue to reside in that county or subcircuit after winning a circuit-wide retention election. For the following reasons, it is my opinion that after winning a circuit-wide retention election, resident judges may reside anywhere within that circuit.

BACKGROUND

Article VI of the Illinois Constitution of 1970 sets forth the basic structure of the judiciary and the qualifications necessary to be a judge, including a residency requirement.

Specifically, article VI, section 11, of the Constitution, entitled Eligibility for Office, provides, in pertinent part:

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.
(Emphasis added.) Ill. Const. 1970, art. VI, §11.

To understand the "unit" in which a circuit court judge must reside, it is necessary to understand the geographical area from which a circuit court judge is selected.

Illinois is currently divided into five judicial districts. Ill. Const. 1970, art. VI, §2; 705 ILCS 20/0.01 *et seq.* (West 2004).¹ Those judicial districts are in turn divided into judicial circuits, consisting of one or more counties. Ill. Const. 1970, art. VI, §7; 705 ILCS 35/1 (West 2004). Pursuant to subsection 7(a) of article VI of the Constitution, the General Assembly "may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large." Ill. Const. 1970, art. VI, §7(a). The General Assembly has determined that circuit court judges in Illinois may be elected in one of two ways: (1) either by the circuit at large, that is, by the voters of the entire circuit; or (2) from a subcircuit or a particular county of a judicial circuit.² *See Thies v. State Board of Elections*, 124 Ill. 2d 317, 319 (1988); *see also* ILCS Ann., 1970 Ill. Const., art. VI, §7, Constitutional Commentary, at 428 (Smith-Hurd 1993). Consequently, the "unit" that initially selects a circuit

¹Although the Judicial Districts Act was repealed by Public Act 89-719, effective March 7, 1997, this Public Act was declared unconstitutional in *Cincinnati Insurance Co. v. Chapman*, 181 Ill. 2d 65 (1998). Therefore, the Judicial Districts Act remains in effect.

²In the Circuit Court of Cook County, resident circuit court judges are elected solely from subcircuits. 705 ILCS 35/0.01 *et seq.* (West 2004); 705 ILCS 50/1 *et seq.* (West 2004).

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court judge may be an entire judicial circuit, a subcircuit of the judicial circuit, or a particular county within a judicial circuit. *See Thies*, 124 Ill. 2d at 319.

An incumbent circuit court judge may seek retention of his or her office through a retention election. *See* Ill. Const. 1970, art. VI, §12(d). Article VI, section 12, of the Constitution sets forth the procedures for the retention of judges and provides, in pertinent part:

The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. (Emphasis added). Ill. Const. 1970, art. VI, §12(d); *see also* 10 ILCS 5/7A-1 (West 2004).

Under this provision, although a resident judge is initially elected solely by the voters of a single subcircuit or county within a circuit, that judge is retained by the voters of the entire judicial circuit, not the particular subcircuit or county. ILCS Ann., 1970 Ill. Const., art. VI, §12, Constitutional Commentary, at 462 (Smith-Hurd 1993).

Notwithstanding the differences in the geographical units that initially elect a circuit court judge and those that retain that judge, various provisions of the Circuit Courts Act (705 ILCS 35/0.01 *et seq.* (West 2004)) require that a resident judge elected from a subcircuit must reside in that subcircuit and "continue to reside in that subcircuit *as long as he or she holds that office.*" (Emphasis added.) *See* 705 ILCS 35/2f(e), 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). Other provisions relating to circuit courts mandate that a judge be a "resident" of a particular county, but do not contain language requiring continued residency. *See, e.g.,* 705 ILCS 35/2d(1), 2f-7, 2g, 2i, 2j (West 2004).

The Illinois Supreme Court addressed the issue of statutorily-created, judicial residency requirements in *Thies v. State Board of Elections*. In *Thies*, amendments to the Circuit Courts Act provided that a candidate for a newly-created judgeship in Champaign County had to be a resident of Champaign County, but had to run for the office throughout the entire Sixth Judicial Circuit, which was comprised of multiple counties.

The *Thies* Court concluded that the General Assembly lacked the authority to require a judicial candidate to reside in a particular part of the unit that selected him. The Court reasoned:

Because Public Act 85-866, as amended by Public Act 85-903, attempts to add the qualification that candidates for certain judgeships have to be residents of particular counties and nevertheless be elected from the circuit at large, under the construction we place on article VI, sections 7(a) and 11, it is unconstitutional. As noted above, there is an arguable ambiguity contained in article VI, section 11. However, it would seem logical that under section 11, if the unit that selects the judge is the circuit, then any person otherwise qualified who lives anywhere in the circuit is qualified. Similarly, if the unit that selects the judge is a county or a division of the circuit, then any otherwise qualified person who resides within the unit would be eligible for the judgeship. The legislature cannot require the additional qualification that the candidate reside in a particular part of the unit which selects the judge. Furthermore, article VI, section 7(a), cannot be viewed as a grant of power to the legislature to add qualifications to article VI, section 11. That would be a strained construction and would lead to a result not contemplated by the delegates to the constitutional convention. *Thies*, 124 Ill. 2d at 325-26.

As the *Thies* Court noted, where the Constitution prescribes qualifications for an office, its declaration is conclusive of the whole matter, and the General Assembly is without

authority to change or add to the qualifications unless the Constitution gives it the power. *See Thies*, 124 Ill. 2d at 325; *see also Cusack v. Howlett*, 44 Ill. 2d 233, 242-43 (1969); *People ex rel. Nachman v. Carpentier*, 30 Ill. 2d 475, 478 (1964), quoting *People ex rel. Hoyne v. McCormick*, 261 Ill. 413, 423-24 (1913).

ANALYSIS

Statutory Provisions

To avoid any potential constitutional issue, you have suggested that the phrase "holds that office" in various provisions of the Circuit Courts Act (*see* 705 ILCS 35/2f(e),³ 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.)) may be interpreted to apply only to the term of office in which the circuit court judge was elected from the subcircuit. It would then follow that the statutory provisions would not apply to retention elections in which circuit court judges are elected by the entire judicial circuit, thereby avoiding any potential constitutional issue. After reviewing the pertinent statutory provisions and the corresponding legislative history, I cannot read the phrase "holds that office" to apply only to the term of office in which the circuit court judge was elected from the subcircuit in order to avoid the constitutional issue.

Under the plain language of the various provisions of the Circuit Courts Act, a resident judge elected from a subcircuit must reside in that subcircuit and "continue to reside in

³For example, section 35/2f(e) of the Circuit Courts Act provides: "A resident judge elected from a subcircuit shall continue to reside in that subcircuit as long as he or she holds that office." 705 ILCS 35/2f(e) (West 2004).

that subcircuit as long as he or she holds that office." *See* 705 ILCS 35/2f(e), 2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). The phrase "holds that office" clearly refers to the office of circuit court judge, not merely to the initial term of office in which the circuit court judge was elected from the subcircuit. Nothing in the language of the various provisions of the Circuit Courts Act supports the conclusion that the phrase "holds that office" refers merely to the initial term of office in which the circuit court judge was elected from the subcircuit. To find otherwise would read into the language of the Circuit Courts Act an exception, limitation, or condition that the General Assembly did not express. *See Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002).

Even if the residency language of subsections 2f(e), 2f-2(d), 2f-4(d), 2f-5(d), 2f-6(d) and 2f-9(d) of the Circuit Courts Act was unclear regarding the office to which the provisions refer and could be read to apply only to the initial term of office for a circuit court judge, the legislative history of section 2f belies such an interpretation. The legislative debates of section 2f indicate that the General Assembly intended for subcircuit judges to continue to reside in the subcircuit after being retained by a circuit-wide retention election:

Young, A.: Does the language of Section 2, (f)...(e) on page 18, lines 21 through 23 of House Amendment #2, require a judge to remain a resident of the subcircuit from which he or she was elected as long as he or she holds that office?

Williams: Yes. *Once elected, the resident judge must continue to reside in that subcircuit as long as he or she serves in that position even when he or she is on the ballot for retention.* (Emphasis added.) Remarks of Rep. Williams, November 29, 1990, House Debate on Senate Bill No. 543, at 115.

Based on the legislative history of section 2f, it is clear that the General Assembly intended the residency requirements of section 2f to apply to judges retained through a circuit-wide election. I must give a consistent interpretation to the other provisions in the Circuit Courts Act requiring residency in subcircuits, because these provisions contain similar language. *See* 705 ILCS 35/2f-6(d) (West 2004); 705 ILCS 35/2f-2(d), 2f-4(d), 2f-5(d) (West 2004), as amended by Public Act 94-727, effective February 14, 2006; 705 ILCS 35/2f-9(d) (West 2005 Supp.). Under the principles of statutory construction, sections of the same statute should be considered *in pari materia*, and each section should be construed with every other part or section of the statute to produce a harmonious whole. *St. Paul Fire & Marine Insurance Co. v. Smith*, 337 Ill. App. 3d 1054, 1060 (2003), *appeal denied*, 205 Ill. 2d 646 (2003). Consequently, I cannot read the phrase "holds that office" to apply only to the term of office in which the circuit court judge was elected from the subcircuit to avoid the constitutional issue.⁴

Constitutional Provisions

Having determined that your inquiry cannot be resolved based on a construction of the statutory language, I turn to the constitutional issue. Article VI, section 11, of the Constitution provides that a person is eligible to be a judge if "he is a United States citizen, a licensed attorney-at-law of this State, and *a resident of the unit which selects him.*" (Emphasis added.) Ill. Const. 1970, art. VI, §11. Pursuant to article VI, section 12(d), of the Constitution,

⁴In contrast, other provisions in the Circuit Courts Act mandate that a judge be a "resident of and elected" from a particular county, but do not contain language requiring continued residency. *See, e.g.*, 705 ILCS 35/2d(1), 2f-7, 2g, 2i, 2j (West 2004). Because judges are elected from a particular county only when they are initially elected, and not during retention elections, the General Assembly must have intended that these county residency requirements apply to a judge only during his or her initial term of office and not after being retained. Therefore, no constitutional issue is presented as to these provisions.

retention elections "shall be conducted * * * in the circuit for Circuit Judges." Ill. Const. 1970, art. VI, §12(d); *see* 1991 Ill. Att'y Gen. Op. 204 (applying eligibility requirements of article VI, section 11, to retention elections).⁵ Reading sections 11 and 12(d) together, for a circuit court judge who has won retention by the full judicial circuit, the unit selecting the judge is the entire judicial circuit, and the judge may reside anywhere within that circuit, notwithstanding the fact that the judge was initially elected by the voters in a subcircuit or particular county of a judicial circuit. *See Thies*, 124 Ill. 2d at 325-26.

Because the Constitution prescribes residency requirements for circuit court judges retained by a circuit-wide election, the General Assembly cannot change or add to these qualifications unless the Constitution authorizes it to do so. Article VI authorizes the General Assembly to provide for the division of judicial circuits for the purpose of the selection of judges (Ill. Const. 1970, art. VI, §7(a)) and designates a number of other matters, such as the number of circuit court judges in a circuit, upon which the General Assembly may act (Ill. Const. 1970, art. VI, §§7(b), 8, 9, 12(e), 14, 15). The Constitution, however, does not authorize the General Assembly to prescribe additional residency requirements for circuit court judges retained by circuit-wide election. Moreover, as the *Thies* Court held, article VI, section 7(a), which provides for the division of the circuits for the selection of circuit court judges, cannot be viewed as a grant of power to the General Assembly to impose qualifications in addition to those set forth in

⁵Under section 7A-1 of the Election Code (10 ILCS 5/7A-1 (West 2004)), retention elections of circuit judges are conducted at general elections on a circuit-wide basis. Circuit judges receiving an affirmation vote of three-fifths of the electors voting on the question are retained.

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article VI, section 11, nor can it be found to have conferred power on the General Assembly to impose qualifications in addition to those set forth in article VI, section 12. It necessarily follows that the General Assembly may not require circuit court judges to reside in a subcircuit or particular county of a judicial circuit after having won a circuit-wide retention election, and that a statutory provision seeking to do so would conflict with the Constitution. *See O'Brien v. White*, 219 Ill. 2d 86, 100 (2006) (the General Assembly cannot enact legislation that conflicts with specific provisions of the Illinois Constitution, unless the Constitution specifically grants the General Assembly that authority); *see also Thies*, 124 Ill. 2d at 325-26.

CONCLUSION

Therefore, it is my opinion that a "resident judge," who is initially elected from a single county or subcircuit within a judicial circuit, may reside anywhere within that circuit after winning a circuit-wide retention election.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL