

Law Offices of
ROBERT T. HANLON & ASSOCIATES, P.C.

131 East Calhoun Street
Woodstock, IL 60098

Robert Thomas Hanlon

Phone: 815-206-2200
Fax: 815-206-6184

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Alyssia Benford
1517 Somerfield Drive
Bolingbrook, IL 60490

Dear Alyssia:

Thank you for contacting my office for an opinion as to the effective date a Supervisor's resignation becomes effective. Based on my research, which is referenced herein, a Supervisor's Resignation is effective upon its delivery to the Clerk of the Township. My conclusion is based on a review of several cases, the Illinois Election Code and the various Constitutions of the State of Illinois.

In particular, you asked me if the 1881 decision of the Illinois Supreme Court is still good law referencing to: *People ex rel Illinois Midland Railway Company v Supervisor of Barnett Township*, 100 Ill. 332 (IL 1881).

The decision in Barnett stood for three basic propositions. The first is that mandamus directed at a Supervisor to perform a ministerial function will be applicable to the successor Supervisor. The second is that under the Illinois Constitution that was in existence in 1881 a Supervisor's resignation was effective upon the appointment and swearing in of his successor. The third proposition is that public convenience is superior to the rights of the Supervisor to Resign commanding him to act even though the Supervisor resigned.

Much has changed since 1881. Specifically, in this context, Illinois revised the Township Codes, passed an Election Code, and importantly adopted a new Constitution in 1970, one hundred years after the Constitution considered in *Barnett*.

In *People ex rel. Adamowski v. Kerner*, 19 Ill.2d 506, 167 NE2d 555, 551-12 (1960), the court stated:

Paragraph 25-2 of the Election Code clearly states that every elective office shall become vacant before the expiration of the term of such office upon the resignation of the incumbent. It does not require that such resignation be accepted....

Therefore, the resignation of an officer effective either forthwith or at a future date may not be withdrawn after such resignation is received by or filed with the officer authorized by law to fill such vacancy or to call an election for such purpose.

The Court cited to both *People ex rel. McCarthy v. Barrett*, 365 Ill. 73; *Pace v. People ex rel. McMeen*, 50 Ill. 432. It went on to say

"In the event the right of creditors or public convenience require that there should be no vacancy in the office from which the incumbent seeks to resign, then affirmative action is required of the officer receiving the resignation in order to preclude it from becoming effective. Absent such affirmative action, the resignation becomes effective either forthwith or upon the future date specified therein, as the case may be, when received by or filed with such officer, and it cannot be withdrawn." *Adamowski* at 471-72.

You further requested that should I conclude a supervisor's resignation given to the Clerk is effective upon delivery, to opine on the impact of a person that has resigned as Supervisor and thereafter executes checks on behalf of the Township where he previously held the office of Supervisor.

For the reasons set forth hereinabove, the decision in *People ex rel Illinois Midland Railway Company v Supervisor of Barnett Township*, 100 Ill. 332 (IL 1881) is not applicable to the present statutory framework. Importantly, in *Swain v. Winnebago Cty.*, 111 Ill. App. 2d 458, 472, 250 N.E.2d 439, 446 (Ill. App. Ct. 1969) determined that the resignation of a Supervisor was effective upon receipt by the Town Clerk. More recently, in 1977, the Fifth District Illinois Appellate court ruled that the vacancy in the office of a supervisor was effective on delivery to the Township Board his letter of resignation. There the Court stated citing to *Swain v Co of Winnebago*, (Citation Omitted), *People ex rel. Krapf v. Hayes*, 13 Ill.2d

143, 147, 148 N.E.2d 428 (1958) and served. *People v. Barrett*, 365 Ill. 73, 77, 5 N.E. 453 (1936).”

Moreover, a Check is a negotiable instrument and everything about a check instills upon its recipient that the person executing it has full power and authority to execute the draft.

Importantly, the Illinois Criminal Code 720 ILCS 5/17-3 provides in pertinent part:

§ 17-3. Forgery.

(a) A person commits forgery when, with intent to defraud, he or she knowingly:

(1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another; or

(2) issues or delivers such document knowing it to have been thus made or altered; or

(3) possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered; or

(4) unlawfully uses the digital signature, as defined in the Financial Institutions Electronic Documents and Digital Signature Act,¹ of another; or

(5) unlawfully uses the signature device of another to create an electronic signature of that other person, as those terms are defined in the Electronic Commerce Security Act.²

(b) (Blank).

(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. A document includes any record or electronic record as those terms are defined in the Electronic Commerce Security Act. For purposes of this Section, a document also includes a Universal Price Code Label or coin.

(c-5) For purposes of this Section, “false document” or “document that is false” includes, but is not limited to, a document whose contents are false in some material way, or that purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority.

(d) Sentence.

(1) Except as provided in paragraphs (2) and (3), forgery is a Class 3 felony.

(2) Forgery is a Class 4 felony when only one Universal Price Code Label is forged.

(3) Forgery is a Class A misdemeanor when an academic degree or coin is forged.

720 Ill. Comp. Stat. Ann. 5/17-3

Based on the elements for the crime of forgery contained within the Criminal Code cited above, the signature on a check is a representation that the person so signing has the authority to sign the check. In the case of a public official who resigned and the resignation is effective upon delivery, the act of signing checks would be felonious and expose the signer to criminal liability.

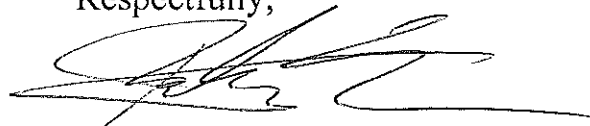
Similar cases where a person acts without authority that have been convicted of Forgery include: *People v. Panagiotis*, App. 1 Dist.1987, 114 Ill.Dec. 125, 162 Ill.App.3d 866, 516 N.E.2d 280, appeal denied 119 Ill.Dec. 393, 119 Ill.2d 569, 522 N.E.2d 1252; *People v. Young*, App. 4 Dist.1974, 19 Ill.App.3d 455, 311 N.E.2d 609. (Where defendant, although president of corporation, was not authorized to issue certificate of stock in question, certificate was forged despite defendant's office in corporation and genuineness of corporate secretary's signature.) *People v. Kubanek*, 1939, 19 N.E.2d 573, 370 Ill. 646. (One who filled in checks over admittedly genuine signature of maker but in violation of his authority was guilty of "forgery.")

Here it is highly unlikely that if a former Supervisor signed checks drawn on an account of the Township after tendering his resignation to the Clerk or the Town Board that he would be doing anything but committing a crime. Although I am not the States Attorney, I would be obligated to inform the authorities if I was aware of that conduct. Anyone advocating that conduct or aiding that conduct could be exposed to additional criminal liability. See: *People v. Charleston*, App. 4 Dist.1977, 4 Ill.Dec. 709, 46 Ill.App.3d 141, 360 N.E.2d 822 (Evidence that defendant drove women companions to building where companions stole public aid check from a mailbox and that defendant voluntarily drove women to the bank, knowing that they intended to commit a forgery there, was sufficient to prove guilt of conspiracy to commit forgery beyond a reasonable doubt)

Accordingly, I strongly advise against being remotely involved or even connected with any act that facilitates any degree of the prior Supervisor executing checks for the Township. That includes giving access to the checks, approving the payment of bills by check with no person holding the title of supervisor, facilitating a meeting for the purpose of issuing checks. To be clear, any act no matter how venial that facilitates the commission of forgery is stupidity.

Finally, as an attorney, if another attorney was remotely involved or advised the commission of a forgery I would be duty bound to report that conduct.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. Hanlon', with a long horizontal flourish extending to the right.

Robert T. Hanlon, Esq