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Via U.S. Mail and Email
Charles Lee Stodden

RE: *Review of Illinois law regarding Supervisor of Assessments for Coles County, IL*

Dear Mr. Stodden:

You have asked us for an opinion on whether a County Board may contract with an individual to conduct assessments. Our opinion is that a County Board does not have such authority. It is well-settled law in Illinois that legislative silence regarding a governmental position that is otherwise fully provided for by law is limiting; a subordinate unit of government may not act except in accordance with the law. And under Illinois law, while a township (or multi-township) board of trustees has the power to appoint or contract with assessors (when not elected), a County Board does not; it has only the power to appoint (when not elected) a Supervisor of Assessments.

Illinois' Property Tax Code is found at Chapter 35 of the Illinois Compiled Statutes. *See* 35 ILCS § 200 *et seq.* The Code outlines the procedure for valuation and assessment of real property across the state. 35 ILCS §§200/9 – 200/14. To implement this procedure, the code creates various positions at the township and county level. 35 ILCS §§200/2 – 200/3.

At the township level, the Code provides for township and multi-township (for townships with less than a thousand inhabitants) assessors, who are to assess properties within their jurisdiction. 35 ILCS §§202/2; *id.* at §§ 200/9 – 200/14. Those positions are generally filled by election from qualified candidates. 35 ILCS § 200/2-45. But a township or multi-township may appoint or contract with an assessor if no candidate meets the legislatively prescribed qualifications. *Id.*; *see* 35 ILCS § 200-2/60(a) (appointment), 35 ILCS § 200-2/60(b) (contracting). The assessor's compensation is fixed by the township or multi-township board of trustees. 35 ILCS § 200-2/20; 35 ILCS § 200-2/70. And the assessors' duties are fixed by statute. 35 ILCS §§200/9 – 200/14.

At the county level, the Code provides for a Supervisor of Assessments. *Id.* §200/3-5. That position is to be filled by a person who meets legislatively prescribed qualifications, either by election or by appointment by the presiding officer of the County Board, with the advice and consent of that Board. *Id.* In contrast to the statutory framework for township or multi-township assessors, nothing in the Code permits a county to contract out the Supervisor of Assessments position. 35 ILCS § 200/3 *et seq.* Instead, the county board may only prescribe the compensation of the Supervisor of Assessments within the context of the Property Tax Code, with that individual's duties prescribed by statute. *Id.* The Code also explicitly provides that the Supervisor of Assessments (not the county board) has the power to appoint necessary deputies and clerks, with the advice and consent of the County Board, whose compensation shall be set and paid by the county board. 35 ILCS § 200/3-40.

In Illinois, “[t]he law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer.” *Ashton v. Cook County*, 384 Ill. 287, 300 (Ill. 1943); *see generally McKay v. Kusper*, 252 Ill.App.3d 450 (1st Dist. 1993) (holding that, because the State’s Attorney’s position and duties are provided for by statute, private individuals do not have a right to sue on behalf of a county, except when such a right is expressly provided by statute); *Mathew v. Town of Algonquin*, 3 Ill.App.3d 429 (2d Dist. 1972) (quoting *Ashton* and holding that the town had an *ultra vires* defense against a private contractor seeking payment); *Grassini v. DuPage Township*, 279 Ill. App. 3d 614, 620 (3d Dist. 1996); *Nielsen-Massey Vanillas, Inc. v. City of Waukegan*, 276 Ill. App. 3d 146, 152-53 (2d Dist. 1995).

Because the duties and salary of an assessor are set out by statute, and the ability to elect, appoint, or contract with an assessor is fixed at the township level, it is our opinion that a County Board may not contract to hire an assessor.

Regards,
RATHJE WOODWARD LLC



Brian J. Murray