



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

August 4, 2011

I - 11-006

COMPENSATION:  
Compensating County Board  
Members on a Per Meeting Basis

The Honorable Kevin P. Nolan  
State's Attorney, Douglas County  
Douglas County Courthouse, Room 105  
Tuscola, Illinois 61953-1665

Dear Mr. Nolan:

I have your letter inquiring whether, as part of the decennial reapportionment process, a county board may determine to compensate county board members on a "per meeting" basis. As is discussed more fully below, under section 2-3008 of the Counties Code (55 ILCS 5/2-3008 (West 2010)), a county board may elect to compensate its members on either a *per diem* basis or an annual basis, or on a combined *per diem* and annual basis. A county board, however, may not fix the compensation of its members on a per meeting basis.

BACKGROUND

According to your letter, the Douglas County Board is considering the manner of compensating its members pursuant to section 2-3008 of the Counties Code. Specifically, the county board is contemplating paying board members on a per meeting basis. Thus, a member who attends more than one meeting during a single day would be compensated for each meeting attended. You inquire whether compensating county board members on a per meeting basis is permissible under section 2-3008.

## ANALYSIS

Section 2-3008 of the Counties Code provides, in pertinent part:

At the time it reapportions its county under this Division,<sup>(1)</sup> the county board shall determine whether the salary to be paid the members to be elected shall be computed on a *per diem* basis, on an annual basis or on a combined *per diem* and annual basis, and shall fix the amount of that salary. If the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution. Those changes shall not however, take effect during the term for which an incumbent county board member has been elected. (Emphasis added.)

Non-home-rule counties, such as Douglas County, acting through their county boards (55 ILCS 5/5-1004 (West 2010)), possess only those powers expressly granted to them by the constitution or by statute, together with those powers that are necessarily implied therefrom to effectuate the powers that have been expressly granted. Ill. Const. 1970, art. VII, §7; *Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981); *Heidenreich v. Ronske*, 26 Ill. 2d 360, 362 (1962); *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 724 (2003). Further, compensation for official services rendered on behalf of the State or any public corporation rests wholly upon statutory provision or authority, and public officers have no claim for official services rendered except to the extent that compensation is provided for by law. *Sprinkle v. County of Cass*, 340 Ill. 382, 383-84 (1930).

The plain language of section 2-3008 provides a county board with the option of selecting one of three alternative bases for compensating county board members: *per diem* payments; an annual salary; or an annual salary together with *per diem* payments. There is no reference in section 2-3008 to compensation on a "per meeting" basis. Moreover, the term "*per diem*" commonly refers to compensation or an allowance for expenses which is intended to cover the entire twenty-four hours in a day, and which is not contingent upon the amount of time

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<sup>1</sup>Section 2-3002 of the Counties Code (55 ILCS 5/2-3002 (West 2010)) provides that by July 1, 1971, and each 10 years thereafter, the county board of each county having a population of less than 3,000,000 inhabitants and the township form of government shall reapportion its county so that each member of the county board represents the same number of inhabitants. According to 2010 census data available on the United States Census Bureau website (<http://2010.census.gov/2010census/data/> (last visited May 20, 2011)), the population of Douglas County is 19,980. Douglas County is under township organization. See Illinois Secretary of State, Illinois State Archives, Douglas County Fact Sheet, <http://www.sos.state.il.us/departments/archives/irad/douglas.html> (last visited May 20, 2011).

actually engaged in official duties. *County of Christian v. Merrigan*, 191 Ill. 484, 488 (1901); 1972 Ill. Att'y Gen. Op. 279, 281; 1965 Ill. Att'y Gen. Op. 7; 1959 Ill. Att'y Gen. Op. 218, 220; Ill. Att'y Gen. Inf. Op. No. I-93-049, issued October 8, 1993. Applying the commonly understood meaning of the phrase "*per diem*," this office has consistently rejected suggestions that county board members' salaries may be calculated on a "per meeting" basis.

In opinion No. S-535, issued November 9, 1972 (1972 Ill. Att'y Gen. Op. 279), Attorney General Scott was asked to review the validity of a county board rule purporting to authorize its members to receive additional compensation for attending more than one meeting per day. The compensation of the board members had been fixed on a *per diem* basis. The Attorney General concluded that the county board could not lawfully provide for its members to receive more than one *per diem* payment regardless of the number of meetings they attended in a day.

Subsequently, in informal opinion No. I-92-038, issued July 20, 1992, this office was specifically asked whether the county board of a non-home-rule county had the authority to compensate its members on a "per meeting" basis. Based on the Illinois Supreme Court's reasoning in *Sprinkle*, 340 Ill. at 383-84, and the language of the statute (*see* Ill. Rev. Stat. 1991, ch. 34, par. 2-3008, now codified at 55 ILCS 5/2-3008 (West 2010)), informal opinion No. I-92-038 concluded that the county board had no authority to adopt the proposed "per meeting" method of compensation.

Similarly, informal opinion No. I-93-049, issued October 8, 1993, involved the issue of whether members of a county board of a non-home-rule county could be compensated at different *per diem* rates based upon the number of committee or board meetings attended during a twenty-four hour period. This office concluded that the proposal could accurately be described as an award of compensation on a per meeting basis, which was not a permissible method of compensating the board members.

## CONCLUSION

Under the plain and unambiguous language of section 2-3008 of the Counties Code, at the time of its decennial reapportionment, the county board shall determine whether to compensate its members on a *per diem* basis, an annual basis, or a combined *per diem* and annual basis. Section 2-3008 makes no provision for compensating county board members on any other basis, such as a payment for individual meetings attended. Moreover, it is clear that compensating county board members based upon the number of meetings they attend is neither an annual salary nor a *per diem* payment, or a combination of both, within the scope of section 2-3008 of the Counties Code. Consequently, because section 2-3008 of the Counties Code

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provides that a county board shall select one of the three bases for compensating its members provided for therein, **a county board does not have the authority to adopt any other basis for payment, including a "per meeting" payment.**

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

~~Very truly yours,~~



LYNNE E. PATTON  
Senior Assistant Attorney General  
Chief, Public Access and Opinions Division

LEP:LAS:lk:an



WILLIAM G. CLARK  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

April 17, 1961

FEES AND SALARIES:  
Member of county board  
of supervisors - meaning  
of "per diem."

Honorable Omer T. Shawler  
State's Attorney, Clark County  
Marshall, Illinois

Dear Mr. Shawler:

I have your communication of April 15, 1961, where-  
in you state as follows:

"Your opinion in the following regard is  
requested:

"May a member of the County Board of Super-  
visors collect compensation for more than  
one day for services rendered on one cal-  
endar day to the county where on the calen-  
dar day he attends a regular convened meeting  
of the County Board of Supervisors and also  
attends to duties of a meeting of a committee  
of the Board.

"That is, may a member of the County Board of  
Supervisors collect a day's compensation for  
attending a regular meeting of the Board and  
a day's compensation for attending a committee  
meeting of the Board all on the same calendar  
day."

Pursuant to Ill. Rev. Stat. 1959, chap. 53, par.  
58, the compensation of a member of the board of supervisors  
is a "per diem" for attending meetings of the county board  
and meetings of committees of the county board to be paid by  
the county.

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Honorable Omer T. Shawler - 2

Our Supreme Court in the case of County of Christian v. Merrigan, 191 Ill. 484-488, held that a "per diem" compensation covered the entire twenty-four hours in a calendar day. For cases from other jurisdictions see, 1 ALR 276.

On the basis of the holding of the Supreme Court in the Merrigan case, supra, it is my opinion that the county cannot be liable to a member of the board of supervisors for more than one "per diem" in the twenty-four hours of a calendar day. It therefore follows that a member of the county board cannot collect two "per diems" from the county for the same calendar day.

Very truly yours,

Attorney General.  


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WILLIAM G. CLARK  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

September 9, 1964

OP1755

FILE NO. UPI255

**Fees and Salaries:**  
Per Diem Fees of Member  
of Board of Supervisors

Honorable Richard Stengel  
State's Attorney  
Rock Island County  
Rock Island, Illinois

Dear Mr. Stengel:

I have your communication of August 17, 1964, wherein  
you state as follows:

"Your opinion is respectfully  
requested as to the following ques-  
tion: Can a member of the Board of  
Supervisors receive a per diem fee  
for attending a supervisor's meeting  
and also a second fee for a Liquor  
commission meeting when both meetings  
are on the same day?

"Your predecessors have ruled  
that a per diem payment covers all  
duties during a twenty-four hour  
period. (1959 A.G.O. 218, 1953 A.G.O.  
31). However, I am not certain that

UPI255

this rule prohibits two payments when the Board member is acting in two separate capacities, as evidenced by the fact that the payments are charged to two different appropriation items.

"In 1937 A.G.O. 999, it was held that when the Chairman of the County Board acted as Liquor Commissioner, he was acting in a different capacity than that of Supervisor and therefore could receive a per diem at a higher rate than the rate for Board members. The same ruling had earlier been made for the Board Chairman acting as Chairman of the Board of Review. If separate per diems can be drawn for work done in each capacity, would it be possible for the Chairman of the Board to attend to Board of Review business in the morning, Board of Supervisors' business in the afternoon, and a Liquor Commission meeting in the evening, thereby earning three per diem fees?

"If so, could the Board of Supervisors establish a policy limiting all Board members to one per diem fee for all County business undertaken in any capacity during any one twenty-four hour period?"

Illinois Revised Statutes 1963, Chapter 53, Paragraph 58, relating to the compensation of Supervisors, provides as follows:



"Supervisors and Assistant Supervisors when attending the sessions of the County Board of Supervisors or engaged in the committee work of such Board shall receive for their services a fee to be fixed by such Board but not to exceed \$20 per day which shall be in full for all services rendered on such day, plus 10 ¢ per mile for each mile necessarily traveled in going to and from the county seat or place of committee meeting, plus any expense incurred while, or in connection with, carrying out the business of the County Board of Supervisors outside the boundaries of the county, payable out of the County Treasury. The County Board of Supervisors may permit a member of the board to work alone and be paid in the usual manner."

Illinois Revised Statutes 1963, Chapter 120, Paragraph 489, relating to members of the Board of Review, provides in part as follows:

"\* \* \* The chairman of the county board shall be ex-officio chairman of the board of review.

\* \* \*  
The members of the board of review shall receive as compensation such sum per day for each day of service as shall be fixed by the county board, their time of service to be made out in due form with day and date, and sworn to by the members thereof.\* \* \*

Hon. Richard Stengel

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Illinois Revised Statutes 1963, Chapter 43, Paragraph 111, provides in part as follows:

"The \* \* \* chairman of the county board shall be the local liquor control commissioner for their \* \* \* counties \* \* \*"

Paragraph 111a, relating to the compensation of the liquor control commissioner, provides in part as follows:

"The \* \* \* county board are authorized to fix and pay compensation to the local liquor control commissioner of the particular \* \* \* county, as the case may be, \* \* \*"

A Supervisor can receive additional compensation for the performance of ex-officio duties. People v. Hira, 406 Ill. 341.

In answer to your first question, there is nothing in the statutes which would prohibit the Chairman of the County Board from attending a Board of Review meeting in the morning, a Board of Supervisors meeting in the afternoon, and a Liquor Commission meeting in the evening, which would entitle him to three per diem compensations.

Hon. Richard Stengel

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In answer to your last question, I would advise that the County Board has no power to alter statutory provisions, and where there is any conflict between rules of the County Board and statutory provisions, the rules of the Board must give way. Ruby Chevrolet Co. v. Department of Revenue, 6 Ill. 2d 147-151.

Very truly yours,

ATTORNEY GENERAL

## OPINIONS

(No. F-1297—December 2, 1964)

**FEES AND SALARIES—Member of Board of Supervisors—Committee Meetings.** By statute, a member of the Board of Supervisors cannot receive two per day compensations for attending two committee meetings on the same day.

**STATUTES CONSTRUED—Illinois Revised Statutes 1963, Chapter 53, Paragraph 58.**

Hon. Robert E. Richardson, State's Attorney, La Salle County, Ottawa:

I have your communication of November 18, 1964, wherein you state as follows:

"I have been requested by the LaSalle County Board of Supervisors to request your opinion on the following question:

"When a supervisor attends more than one committee meeting on any given day, is he entitled to receive only one per diem for the entire day or can he legally obtain a per diem for each committee meeting attended on the same day? In this situation, only one request is made for mileage."

Illinois Revised Statutes 1963, Chapter 53, Paragraph 58, relating to the compensation of members of the Board of Supervisors, provides as follows:

"Supervisors and Assistant Supervisors when attending the sessions of the County Board of Supervisors or engaged in the committee work of such Board shall receive for their services a fee to be fixed by such Board but not to exceed \$20 per day which shall be in full for all services rendered on such day, plus 10¢ per mile for each mile necessarily traveled in going to and from the county seat or place of committee meeting, plus any expense incurred while, or in connection with, carrying out the business of the County Board of Supervisors outside the boundaries of the county, payable out of the County Treasury. The County Board of Supervisors may permit a member of the board to work alone and be paid in the usual manner."

You will notice that the per day compensation is in full for all services rendered on such day.

A per day or per diem compensation covers the entire 24 hours in a day. *County of Christian v. Merrigan*, 191 Ill. 484.

As the statute expressly provides that the per day compensation is in full for all services rendered on that day, it follows that a member of the Board of Supervisors cannot receive two per day fees for attending two committee meetings on the same day.

(No. F-1298—December 2, 1964)

**MUNICIPAL CORPORATIONS—Municipal Audits—Accrual or cash basis.** Section 8-8-5 of the Illinois Municipal Code requires that municipal audits be prepared on an accrual basis of accounting, rather than a cash basis.

**STATUTES CONSTRUED—Illinois Revised Statutes, Chapter 24, Paragraph 8-8-5.**



WILLIAM J. SCOTT  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

May 20, 1970

FILE NO. NP-179

COUNTIES:

Compensation of Supervisors

Honorable Philip G. Reinhard  
State's Attorney  
Winnebago County  
Court House Building, Suite 519  
Rockford, Illinois 61101

Dear Sir:

I have your recent letter wherein you state:

"I have been requested by the Chairman of the Board of Supervisors of the County of Winnebago to seek your opinion on several questions involving per diem compensation payments to members of the County Board and the Board of Commissioners of the Winnebago County Forest Preserve District.

At the Annual Organizational Meeting of the County Board held April 21, 1970, the newly elected chairman relinquished his duties as Ex-Officio Chairman of the Board of Review. Thereupon, the Board of Supervisors by appropriate action appointed an Assistant Supervisor from Rockford Township to serve as Chairman

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of the Board of Review. Also, at such organizational meeting, the same Assistant Supervisor of Rockford Township was appointed Chairman of the Fees and Salaries Committee of the Board. As has been the practice in the past, it is anticipated that the Board of Review will hold daily meetings during the period of its official activities at which such meetings substantial official services are rendered by members of the Board of Review. It is further anticipated that the County Board will continue to meet monthly at adjourned meetings of the Annual Board Meeting to transact the business of the County. Additionally, standing committees of the Board, including the Fees and Salaries Committee, will meet regularly at least once a month to conduct business.

My first question is as follows: May the Assistant Supervisor referred to above, file for a per diem payment for services rendered while attending a regular committee meeting or while attending a monthly meeting of the Board of Supervisors and in addition thereto file for a per diem payment for services rendered as a member of the Board of Review when such services in the stated capacities are rendered on the same day? Implicit in this question is the fact that on such days, official services would be rendered in each capacity.

Further, the Assistant Supervisor of Rockford Township referred to above was also appointed as a member of the Executive Committee of the

Winnebago County Forest Preserve District, a Forest Preserve District co-extensive with the County of Winnebago. Meetings of this committee are held at least once per month, normally in the late afternoon or in the evening.

My second question is as follows: May the Assistant Supervisor of Rockford Township, referred to above, file for services rendered as Chairman of the Board of Review and also file for per diem payment from the Forest Preserve District for services rendered at a meeting of the Executive Committee of the Forest Preserve District when such services in the two separate capacities are rendered on the same day?

My third question is as follows: May the Assistant Supervisor of Rockford Township, referred to above, file for per diem payment from the County for services rendered as Chairman of the Board of Review, payment of a separate per diem from the County for services rendered while attending a monthly meeting of the Board or a regular committee meeting of the Board and payment of a separate per diem from the Forest Preserve District for services rendered while attending a meeting of the Executive Committee of the Forest Preserve District where the separate services are rendered in such three capacities on the same day?

Again, in answering the above question, it should be understood that official services are rendered to each of the three entities by the Assistant Supervisor during the same day.

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Finally, the Chairman of the Board of Supervisors, though having relinquished his position as Chairman of the Board of Review, has expressed his intention to attend some meetings of the Board of Review in his capacity as Chairman of the County Board, particularly when matters relating to County business are under consideration by the Board of Review.

My fourth question is as follows: May the Board Chairman file for per diem payment from the County for service to the County Board on those days which he attends meetings of the Board of Review for the purposes stated?

As the questions posed in this letter concern problems of compensation, your early consideration of the same would be greatly appreciated."

This office has previously held in Opinion No. UP-581, issued on April 17, 1961, that a member of the County Board of Supervisors may not collect compensation for more than one day for services rendered on one calendar day where he attends a regularly convened meeting of the County Board of Supervisors, and also attends to the duties of a regular committee meeting. The case of



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County of Christian v. Harrigan, 191 Ill. 484-488 held that a "per diem" compensation covered the entire twenty-four hours in a calendar day. He could, however, receive a per diem payment for services rendered as a member of the Board of Review even though such services are rendered on the same day as his services as a member of the County Board of Supervisors. Such services are in different capacities. See Illinois Attorney General's Opinion No. UF-1255, issued on September 9, 1964.

In your second question you have inquired as to whether an Assistant Supervisor may file for service rendered as Chairman of the Board of Review and also file for per diem payment from the Forest Preserve District for services rendered at a meeting of the Executive Committee of the Forest Preserve District when such services in the two capacities are rendered on the same day. Such services are in two separate capacities and therefore, I am of the opinion that he may receive a per diem payment for each service even though such services were rendered on the same day.

Honorable Philip G. Reinhard

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In your third question you have asked whether an Assistant Supervisor may file for per diem payment from the County for services rendered as Chairman of the Board of Review, payment of a separate per diem for services rendered while attending a monthly meeting of the Board or a regular committee meeting of the Board and payment of a separate per diem from the Forest Preserve District. Under these facts, for the reasons previously indicated, he would be entitled to three separate per diems since the services rendered were in three separate capacities.

In your fourth question you inquired whether the Board Chairman may file for per diem payment from the County for service to the County Board on those days which he attends meetings of the Board of Review for the purposes stated. In the case of Sprinkle V. County of Cass, 340 Ill. 382, the Illinois Supreme Court, in passing on the question of compensation to a public officer for official services, held as follows:

"Compensation for official services rendered in behalf of the State or any public corporation rests wholly upon statutory provision or authority. (City of Decatur v. Vermillion, 77 Ill. 315; Bruner v. Madison County, Ill id. 11; May v. City of Chicago, 223 Id. 395; Gathmann v. City of Chicago, 263 Id. 292; 1 Dillon on Mun. Corp.-5th ed.-sec. 426; 2 McQuillin on Mun. Corp.-2d ed.-sec. 544). Public officers have no claim for official services rendered except where and to the extent that, compensation is provided by law. (City of Decatur v. Vermillion, supra). In the absence of a provision for compensation, the law deems such services to have been performed gratuitously."

The statutory provision relating to the compensation of County Supervisors is found in Illinois Revised Statutes, 1969, Chapter 53, Paragraph 58, and is as follows:

"Supervisors and Assistant Supervisors when attending the sessions of the County Board of Supervisors or engaged in the committee work of such Board shall receive for their services a fee to be fixed by such Board but not to exceed \$25 per day which shall be in full for all services rendered on such day, plus 10¢ per mile for each mile necessarily traveled in going to and from the county seat of place of committee meeting, plus any ex-

Honorable Philip G. Reinhard

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pense incurred while, or in connection with, carrying out the business of the County Board of Supervisors outside the boundaries of the county, payable out of the County Treasury. The County Board of Supervisors may permit a member of the board to work alone and be paid in the usual manner."

You will note that the County Board of Supervisors may permit a member of the Board to work alone and be paid in the usual manner. If, therefore, the County Board of Supervisors authorizes the Board Chairman to attend meetings of the Board of Review and further authorizes a per diem payment, then such payment would, in my opinion, be authorized. If, however, his attendance at a meeting of the Board of Review was on the same day as a meeting of the County Board of Supervisors or a meeting of a committee of the County Board of Supervisors, only one per diem could be authorized. The Illinois Supreme Court has held in County of Christian v. Merrigan, 891 Ill. 484-488, that

Honorable Philip G. Reinhard

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a "per diem" compensation covered the entire twenty-four hours in a calendar day. It therefore follows that the Board Chairman could not collect two "per diems" from the county for the same calendar day.

Very truly yours,

ATTORNEY GENERAL

rent status of the statutes and the Illinois Constitution. If the Speaker is entitled to receive copies of the abstract of votes it can only serve for informational purposes.

(No. S-534—November 9, 1972)

**COUNTIES: Board Member—Vacancy.** The term "inhabitant" does not necessarily mean the same as "resident", but for all practical purposes the terms are synonymous, at least as the term is used in section 25-2 of the Election Code. If a county board member moves his household permanently out of the district from which he was elected he ceases to be a resident in that district and there is a vacancy in the office.

**STATUTES CONSTRUED:** Illinois Revised Statutes 1971, Chapter 46, Paragraph 25-2.

*Hon. Ronald A. Niemann, State's Attorney, Marion County, Salem, Illinois.*

I have your recent letter wherein you state:

"A request has arrived in my office from the Marion County Board concerning qualifications of one of its members to hold the office of county board member.

Specifically this concerns Chapter 46, Section 25-2 wherein it is stated, 'Fourth—His ceasing to be an inhabitant of the State; or if the office is local, his ceasing to be an inhabitant of the district, county, town, or precinct for which he was elected; provided, that the provisions of this paragraph shall not apply to township officers whose township boundaries are changed in accordance with section 3a of Article III of "An Act to revise the law in relation to township organization", approved March 4, 1874, as amend.'

This statute appears to require that a board member elected from his district vacates the office when he ceases to be an inhabitant of that district. My question is, if a board member moves his household out of the district he was elected from, does he cease to be an inhabitant of that district, thereby creating a vacancy in his office?

Inasmuch as the statute does not refer to residence or domicile requirements, your opinion is requested as to the interruption of the word inhabitant as stated in the statute and whether this is the same as residency or domicile or whether it requires a person to dwell in the district to be an inhabitant of that district."

Section 25-2 of The Election Code, Ill. Rev. Stat. 1971, ch. 46, par. 25-2 provides:

"Every elective office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

• • •

Fourth—His ceasing to be an inhabitant of the State; or if the office is local, his ceasing to be an inhabitant of the district, county, town, or precinct for which he was elected; Provided, that the provisions of this paragraph shall not apply to township officers whose township boundaries are changed in accordance with section 3a of Article III of 'An Act to revise the law in relation to township organization', approved March 4, 1874, as amended.

• • •

You have asked for a definition of the word "inhabitant" as used in the statute and also whether there is a vacancy in a county board district office if a board member moves his household out of that district.

In *Bowes v. City of Chicago*, 3 Ill. 2d 175, the Illinois Supreme Court said that courts should apply to words appearing in legislative enactments the common dictionary meaning or commonly accepted use of the words unless the words are otherwise defined by the General Assembly, (3 Ill. 2d 201.) Webster's New International Dictionary, Second Edition, defines an inhabitant as one who dwells or resides permanently in a place, as distinguished from a transient lodger or visitor. It ordinarily implies more fixity of abode than resident. Ordinarily it is not a synonym for citizen or resident. Your attention, however, is called to the case of *People v. Ballhorn*, 100 Ill. App. 571., wherein the court used the term "inhabitant" interchangeably with that of "resident". In this decision a ward alderman was held to have vacated his office when he ceased to be an inhabitant of the ward for which he was elected. The court said that he must be a resident of the ward that he represents.

In an opinion of this office which was issued on March 30, 1916, found at page 1001 and 1002 of the 1916 Illinois Attorney General's Opinions it was held that a vacancy in the office of township supervisor is created if the supervisor ceases to be an inhabitant of the township. It was said in this opinion that a person is an inhabitant if he lives in a place and has there a fixed and legal settlement.

In conclusion, and as answer to your questions, I am of the opinion that although the term "inhabitant" does not necessarily mean the same as "resident", for all practical purposes the terms are synonymous, at least as the term is used in this statute. If, therefore, a county board member moves his household permanently out of the district from which he was elected, he ceases to be an inhabitant of that district and there is a vacancy in the office.

(No. S-535—November 9, 1972)

**FEES AND SALARIES: Compensation of County Board Members.** Per day or per diem compensation covers the entire 24 hours. Consequently, a rule or resolution of a county board which would permit a county board member to receive payment for two or more board committee meetings on the same day or for a board meeting and also for one or more board committee meetings on the same day, would be invalid.

**CONSTITUTION CONSTRUED:** Illinois Constitution of 1970, Article VII, Section 9(b).

**STATUTES CONSTRUED:** Illinois Revised Statutes 1971, Chapter 34, Paragraph 304 and Chapter 53, Paragraph 58.1.

*Hon. L. Stanton Dotson, State's Attorney, Coles County, Charleston, Illinois.*

I have your recent letter wherein you state:

"Please send this office an official Attorney General's Opinion stating whether or not members of the County Board can receive two fees per day for attending two official County Board committee meetings or a County Board meeting and a committee meeting on the same day. On December 2, 1964, your predecessor wrote an opinion which is

published as the first opinion in the 1965 Attorney General's Opinion stating that the Board of Supervisors could not receive two fees per day. Said opinion interpreted Ill. Rev. Stats. 1971, Chap. 53, Sec. 58, which became ineffective on May 1, 1972.

The Coles County Board was re-apportioned by resolution based on Ill. Rev. Stats. 1971, Chap. 34, Sec. 831 et seq., and compensation for County Board members was fixed by separate resolution at the rate of \$35.00 per day for the County Board Meetings and \$25.00 per day for committee meetings except for the Chairman who received \$50.00 per day. Said resolution which was passed by the former supervisors is attached hereto and made a part hereof by reference.

On July 11, 1972, the new County Board passed the following rule: 'No committeeman shall be entitled to compensation for committee work on the day the Board is in session, except by permission of the Board. Committees shall not sit during the session, except by permission of the Board . . . . No member shall be paid for more than one committee meeting on any given date except by leave of the Board. In no case shall compensation for more than two committee meetings on one day be paid.' It appears to me that Ill. Rev. Stats. 1971, Chap. 53, Sec. 58.1 needs interpretation to decide the aforesaid question, and said statute differs substantially from Sec. 58.

The Coles County Board and the undersigned State's Attorney would deeply appreciate your opinion regarding the validity of the present Board rules quoted aforesaid. Thank you for your opinion in this matter."

The information which you submitted indicates that on June 14, 1971 the former county board passed a resolution which provided that the county board members shall receive \$35.00 per day for each day said members attend county board meetings and \$25.00 per day for each day said members attend committee meetings. It was further provided that the chairman of the board was to receive an additional amount of \$50.00 per month during his tenure as chairman.

You have further advised that on July 11, 1972 the new county board passed the following rule:

"No committeeman shall be entitled to compensation for committee work on the day the Board is in session, except by permission of the Board. Committees shall not sit during the session, except by permission of the Board . . . . No member shall be paid for more than one committee meeting on any given date except by leave of the Board. In no case shall compensation for more than two committee meetings on one day be paid."

You have asked my opinion as to the validity of the foregoing rule.

First of all, your attention is called to sub-section (b) of section 9 of article VII of the 1970 Illinois Constitution which provides:

"(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected."

Because of the foregoing constitutional provision it is apparent that any provision of the rule adopted on July 11, 1972 which would have the effect of increasing or decreasing the salary of a county board member would be invalid since the rule was adopted during the terms of the county board members. Furthermore, section 38 of "An Act to revise the law in relation to counties," (Ill. Rev. Stat. 1971, ch. 34, par. 304) provides as follows:

"The time of fixing the compensation of county officers, which compensation is to be fixed by the county board, shall be at the meeting of such board next before the regu-

lar election of the officers whose compensation is to be fixed; but in case where such compensation is not fixed, the board shall proceed, at the next regular or special meeting held thereafter, to fix such compensation."

Section 39.1 of "An Act concerning fees and salaries," (Ill. Rev. Stat. 1971, ch. 53, par. 58.1) provides:

"County board members elected pursuant to 'An Act relating to the composition and election of county boards in certain counties', enacted by the 76th General Assembly, shall receive such compensation as is fixed by the county board in accordance with the method of compensation selected by the county board. Such compensation shall be set before the general election at which county board members are elected. The chairman of the county board shall receive such additional compensation as determined by the county board in reapportioning the county."

County board members and the chairman of the county board are also entitled to travel and expense allowances as determined by the county board."

Those portions of the rule adopted on July 11, 1972 which would have the effect of increasing or decreasing the compensation of the county board members would be in direct conflict with the above statutory provisions. Where there is a conflict between a statutory provision and a rule or resolution of the county board, the rule or resolution of the county board must give way to the statute. See *Ruby Chevrolet v. Department of Revenue*, 6 Ill. 2d 147, 151; *Chicago Cosmetic Co. v. City of Chicago*, 374 Ill. 384, 393.

In order to answer your question it is necessary to turn our attention to the provisions of the June 14, 1971 resolution of the county board. In this resolution the compensation for county board members was fixed at the rate of \$35.00 per day for county board meetings and \$25.00 per day for committee meetings. The chairman was to be paid an additional \$50.00 per month. It has been held that a per day or per diem compensation covers the entire 24 hours in a day, *County of Christian v. Merrigan*, 191 Ill. 484. See also Opinion No. F-1297 issued by this office on December 2, 1964, found at page 7 of the 1964 Illinois Attorney General's Opinions. Consequently, a county board member who attended a meeting of the county board and also one or more county board committee meetings on the same day may only receive one per diem of \$35.00. If he attended two or more committee meetings on the same day he could receive only one per diem of \$25.00.

The rule adopted by your county board on July 11, 1972 attempts to implicitly authorize the county board to permit a board member to receive payment for more than one board committee meeting on the same day or for a board meeting and also for more than one board committee meeting on the same day. These provisions are, in my opinion, invalid. As previously indicated, per day or per diem compensation covers the entire 24 hours.



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

March 28, 1973

FILE NO. NP-563

COUNTIES:  
Committee of Local  
Improvements

Honorable Edward P. Drolet  
State's Attorney  
Kankakee County  
Courthouse  
Kankakee, Illinois

Dear Mr. Drolet:

I have your letter of February 1, 1973 wherein  
you state:

The County Board proposes to adopt a Resolution, fixing the compensation of the members of the Committee of Local Improvements, created by recently adopted legislation, Public Act 77-2736. Section 3 of said Act (Chapter 34, Section 2703, Illinois Revised Statutes) provides that the Chairman of the County Board, or a person designated by him as a representative, the County Superintendent of Highways and three members of the County Board appointed by the Chairman, are to constitute the Committee, and provides for



compensation, not to exceed \$15 per day for the members of the Committee.

"Chapter 102, Section 1, Illinois Revised Statutes, prohibits the appointment to, acceptance or holding of any office other than those designated (not including said Committee of Local Improvements) by a member of the county board, by appointment or election of the board of which he is a member; and Chapter 102, Section 4, Illinois Revised Statutes, imposes severe penalty, including removal from office, on violation of said section.

"Said Public Act 77-2736, in Sections 4 through 57 thereof, provide the legal steps required for the making of a local improvement under the Act. (Chapter 34, Sections 2704-2757, Illinois Revised Statutes) Section 2 of the Act (Chapter 34, Section 2704, Illinois Revised Statutes) defines "Attorney",

' "Attorney" means the attorney employed by the County committee of local improvements to furnish the necessary legal services in connection with any local improvement to be constructed under this Act.'

"Chapter 14, Section 5 (3), Illinois Revised Statutes, defining the duties of the State's Attorney, requires the State's Attorney to commence and prosecute all actions and proceedings brought by any county officer in his official capacity.

"Questions presented by the foregoing, your opinion on which is hereby respectfully requested, are the following:

1. Is the appointment, acceptance and holding of membership on the Committee

of Local Improvements of the County by County Board members in violation of the provisions of Chapter 102, Section 1, Illinois Revised Statutes?

2. In the event the appointment, acceptance and holding of membership on the Committee of Local Improvements of the County by County Board members is not in violation of the provisions of Chapter 102, Section 1, Illinois Revised Statutes, are the County Board members of the Committee of Local Improvements entitled to per diem compensation for any given calendar day both for service on the county board or one of its committees and for service on the Committee of Local Improvements, in the event meetings thereof should occur on the same day?
3. Is the State's Attorney required to provide the legal services necessary in connection with any local improvement to be constructed under the Act, or is he exempted from duty by the Act, under the provision thereof defining the word 'attorney'?

"Your early opinion hereon will be deeply appreciated."

In your first question you have asked whether the appointment, acceptance and holding of membership on the Committee of Local Improvements by county board members is a violation of Section 1 of "An Act to prevent fraudulent

and corrupt practices \* \* \*," (Ill. Rev. Stat. 1971, ch. 102, par. 1) which provides:

"No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12-17.2 of 'The Illinois Public Aid Code', approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended."

Section 3 of "An Act authorizing certain counties to undertake local improvements and defining the powers and duties of such counties with respect thereto," (Ill. Rev. Stat. (1972 Supp.), ch. 34, par. 2703) states:

"There is created the Committee of Local Improvements consisting of the Chairman or President of the County Board, or some person designated by him as his representative for the purposes of this Committee, the County Superintendent of Highways or administrative head of the county department of public works as determined by such Chairman or President, and 3 members of the County Board appointed by the Chairman thereof. The Committee shall elect from its members a

president, except that the Chairman or President of the County Board, or his representative, as the case may be is prohibited from serving in that capacity. The county board shall provide by resolution for compensation not to exceed \$15 per day for each member while performing his duties as a member of the Committee. The Committee may employ a secretary who shall keep the minutes of the Committee's proceedings and be the custodian of all papers pertaining to the business of the Committee and shall perform all other duties the Committee prescribes."

It is apparent from an examination of the foregoing statutes that there is an inconsistency in them inasmuch as Section 1 of "An Act to prevent fraudulent and corrupt practices \* \* \*," (Ill. Rev. Stat. 1971, ch. 102, par. 1) precludes a member of the county board from being appointed to another office by appointment of the county board except those specific offices mentioned. A member of the board of the Committee of Local Improvements is not mentioned. The general rule in such a situation is set forth in Vol. 82 Corpus Juris Secundum, p. 836 (Statutes, Sec. 363) which reads as follows:

"Statutes in pari materia, although in apparent conflict, or containing apparent inconsistencies, should, as far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each; but, if there is an unreconcilable conflict, the latest enactment

will control, or will be regarded as an exception to, or qualification of, the prior statute."

Applying this rule, the provisions of the Act creating the Committee of Local Improvements become exceptions to the earlier statute. It is clear that the legislature intended that the chairman or president of the county board (or person designated by him) and three members of the county board serve on the Committee of Local Improvements. By passing this later statute they made additional exceptions to the earlier enactment. I am, therefore, of the opinion that the appointment, acceptance and holding of membership on the Committee of Local Improvements of the county by county board members would not be in violation of Section 1 of "An Act to prevent fraudulent and corrupt practices \* \* \*,".

In your second question you have asked whether county board members of the Committee of Local Improvements are entitled to per diem compensation for any given calendar day both for service on the county board or one of its committees and for service on the Committee of Local Improvements, in the event meetings thereof should occur on the same day. This office had occasion to consider a similar question in Opinion No. UP-1255 which was issued on

Honorable Edward P. Drolet - 7

September 9, 1964. In that opinion the issue was whether the chairman of the county board who was ex-officio chairman of the Board of Review and County Liquor Control Commissioner could receive three per diem compensations for attending a Board of Review meeting in the morning, a Board of Supervisors meeting in the afternoon, and a Liquor Commission meeting in the evening, all on the same day. The holding of that Opinion was that he could receive three per diems since he was acting in three separate capacities.

In People v. Hire, 406 Ill. 341 it was held that a member of the Board of Supervisors could receive additional compensation for the performance of ex-officio duties.

Because of the foregoing legal precedents I am of the opinion that your second question is answered in the affirmative.

Your third question asks whether the State's Attorney is required to provide legal services necessary in connection with any local improvements to be constructed under the Act.

Section 2 of "An Act authorizing certain counties to undertake local improvements and defining the powers and

duties of such counties with respect thereto," (Ill. Rev. Stat. (1972 Supp.), ch. 34, par. 2702) states in part:

"In this Act the following terms have the meanings ascribed to them unless the context indicates otherwise:

\* \* \* \*

\* \* \* \*

\* \* \* \*

'Attorney' means the attorney employed by the county committee of local improvements to furnish the necessary legal services in connection with any local improvement to be constructed under this Act.

\* \* \* \*

\* \* \* \*

\* \* \* \* \*

It is apparent from the foregoing definition of "Attorney" that the Act intends that the Committee of Local Improvements" employ a private attorney to furnish the necessary legal services in connection with any local improvement to be constructed under the Act. This, I believe to be true, even though such attorney is not later referred to in the Act. A statute must be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute. (Lincoln National Life Ins. Co. v. McCarthy, 10 Ill. 2d. 489.)

In construing a statute which contains an omission, a court should ascertain the legislative intention, and not

Honorable Edward P. Drolet - 9

its mistakes. A statute must be construed so as to ascertain and give effect to the intention of the General Assembly as expressed in the statute. (Lincoln National Life Ins. Co. v. McCarthy, 10 Ill. 2d 489.) In construing a statute which contains an omission, a court should ascertain the legislative intention, and not its mistakes either as to the law or facts. (People ex rel. Barrett v. Anderson, 398 Ill. 480.) The legislature can define and prescribe the duties of the office of State's Attorney. (Ashton v. County of Cook, 384 Ill. 287, 300.) The legislature did not make it a duty of the office of State's Attorney to provide legal services necessary in connection with local improvements to be constructed under the Act. I am of the opinion that the legislature intended that the Committee of Local Improvements employ an attorney for such purposes.

Very truly yours,

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





**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



July 20, 1992

I - 92-038

COMPENSATION:  
Compensation of County  
Board Members

Honorable Dave Neal  
State's Attorney, Grundy County  
111 East Washington  
Morris, Illinois 60450

Dear Mr. Neal:

I have your letter wherein you inquire whether the county board of a non-home rule county has the authority to compensate its members on a "per meeting" basis and, if so, whether a change from per diem compensation to per meeting compensation may be given effect during the current term of office of the board members. Your question arises as a result of the Grundy county board's adoption of a motion to authorize the compensation of its members for each meeting attended by members within a 24 hour period, thus permitting a member to be compensated for two or more meetings a day. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

In Sprinkle v. County of Cass (1930), 340 Ill. 382, 383-4, the court stated:

" \* \* \*

Compensation for official services rendered in behalf of the State or any public corporation rests wholly upon statutory provision or authority. [Citations omitted.] Public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law. [Citation omitted.] In the absence of a provision for compensation, the law deems such services to have been performed gratuitously.

\* \* \*

Section 2-3008 of the Counties Code provides:

"Determination of method of compensation of members of county board. At the time it reapportions its county under this Division, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis, on an annual basis or on a combined per diem and annual basis, and shall fix the amount of that salary. If the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or resolution. Those changes shall not however, take effect during the term for which an incumbent county board member has been elected.  
\* \* \*

A non-home rule county can exercise only those powers which have been expressly delegated by the General Assembly or those which are necessarily implied from expressly-granted powers. (Brur v. Board of Zoning Appeals (1978), 66 Ill. App. 3d. 938.941.) The General Assembly has authorized county boards to provide for compensation for their members according to one of three methods - either by annual salary, by per diem or by a combination of the two. Under the reasoning of Sprinkle v. County of Cass, since section 2-3008 of the Counties Code does not authorize the board to compensate its members on a "per meeting" basis, it appears that the board has no authority to adopt that method of compensation. This response to

Honorable Dave Neal - 3.

your first inquiry makes it unnecessary to address your second inquiry.

This is not an official opinion of the Attorney General. I apologize for our delay in responding to your inquiry.

Very truly yours,

A solid black rectangular box used to redact the signature of Michael J. Luke.

MICHAEL J. LUKE  
Senior Assistant Attorney General  
Chief, Opinions Division

MJL:SJR:jp



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



October 8, 1993

I - 93-049

COMPENSATION:

County Board Member Compensation  
Different "Per Diem" and  
"Per Meeting" Rates

Honorable Gary W. Pack  
State's Attorney, McHenry County  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire whether members of the county board of a non-home-rule county may be compensated at different per diem rates based upon the number of committee and/or board meetings attended during a twenty-four hour period. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

You have indicated that the McHenry County Board has proposed the adoption of an ordinance which would provide for board members to be compensated at a rate of \$75 for each day that the member attends a morning meeting, and \$100 for each day that the member attends both a morning meeting and an evening meeting. You have asked whether such a differential rate of compensation may be implemented.

It is well established that non-home-rule counties possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Redmond v. Novak (1981), 86 Ill.

Honorable Gary W. Pack - 2.

2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) It is equally well recognized that compensation for official services rendered in behalf of the State or any public corporation rests wholly upon statutory provision or authority, and that public officers have no claim for official services rendered except where, and to the extent that, compensation is provided by law. Sprinkle v. County of Cass (1930), 340 Ill. 382, 383-4.

In this regard, section 2-3008 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 2-3008; 55 ILCS 5/2-3008 (West 1992)) provides, in pertinent part:

"Determination of method of compensation of members of county board. At the time it reapportions its county under this Division, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis, on an annual basis or on a combined per diem and annual basis, and shall fix the amount of that salary. If the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution. Those changes shall not however, take effect during the term for which an incumbent county board member has been elected. \* \* \*" (Emphasis added.)

Under the language quoted above, the General Assembly has authorized county boards to provide for compensation for their members according to one of three methods - by annual salary, by per diem or by a combination of the two. You have indicated that the McHenry County Board has chosen to compensate its members on a per diem basis.

Although the term "per diem" is not defined in section 2-3008 of the Counties Code, a statutory term which is not defined must be given its ordinary and popularly-understood meaning. (Union Electric Co. v. Department of Revenue (1990), 136 Ill. 2d 385, 397.) The phrase "per diem" commonly refers to compensation or an allowance for expenses which is intended to cover the entire twenty-four hours in a day. County of Christian v. Merrigan (1901), 191 Ill. 484, 488; 1959 Ill. Att'y Gen. Op. 218, 220; 1965 Ill. Att'y Gen. Op. 7; 1972 Ill. Att'y Gen. Op. 279, 281.

Honorable Gary W. Pack - 3.

In opinion No. S-534, issued November 9, 1972 (1972 Ill. Att'y Gen. Op. 279), Attorney General Scott addressed the propriety of a county board's rule which purported to authorize its members to receive additional compensation for attending more than one meeting per day. The Attorney General concluded that the county board could not lawfully provide for its members to receive more than one per diem for attending more than one meeting a day.

Further, although the McHenry County Board's proposed ordinance characterizes the proposed method of compensation as a per diem, it would more accurately be characterized as an award of compensation on a "per meeting" basis. Under the reasoning of Sprinkle v. County of Cass, public officers have no claim for official services rendered except to the extent that compensation is provided by law. Since section 2-3008 of the Counties Code does not authorize the board to compensate its members on a "per meeting" basis, it appears that the county board would have no authority to adopt the proposed method of compensation. A county board member is entitled only to receive the established per diem regardless of the number of meetings attended on a given day.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,



MICHAEL J. LORE  
Senior Assistant Attorney General  
Chief, Opinions Division

MJL:LP:cj