

(No. 154—November 27, 1961)

**OFFICERS — Township Assessor — Resignation — Appointment of Successor.** Where the township assessor resigns, his successor is appointed by the town Board of Auditors to serve for the unexpired term.

**STATUTES CONSTRUED**—Illinois Revised Statutes 1961, Chapter 139, Paragraph 96.

Hon. William R. Nash, State's Attorney, Winnebago County, Rockford:

I have your communication of November 8, 1961, wherein you state as follows:

"The following problem has arisen in Winnebago County, Illinois, with reference to the office of Township Assessor of Pecatonica Township, Winnebago County, Illinois, upon which your opinion is requested: At the April election, 1961, the incumbent assessor, whose term expires on December 31, 1961, was re-elected to a new term of four years beginning January 1, 1962, and ending the 31st day of December, 1965. In August, 1961, he resigned his office of Township Assessor for reasons of health. At a special meeting the Board of Town Auditors of Pecatonica Township accepted his resignation for the old term expiring on December 31, 1961, and also accepted his resignation as to the new term which had not yet begun which, in fact, expires on December 31, 1965.

"On the basis of the provisions of Section 96, Chapter 139, Illinois Revised Statutes, (1959), the Board of Town Auditors of Pecatonica Township, by resolution, appointed to the existing vacancy a qualified person as Township Assessor of said Township to fill out the remaining term expiring on December 31, 1961, and at the same time appointed the same person as assessor for the new term commencing January 1, 1962.

"An opinion is requested of you as to whether or not the assessments made by the appointed assessor during the term commencing January 1, 1962, will be valid or whether a special election must be held to fill the office."

A person elected to an office has the right to resign forthwith or to provide that the resignation shall take effect in the future as was held by our Supreme Court in the case of the *People v. Kerner*, 19 Ill. 2d 506, where the court said:

"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. There is a wide spectrum of views as to whether the resignation of an officer effective at a future date may be subsequently withdrawn prior to the effective date of the resignation. Cf.: *Board of Education of Wolfe County v. Rose*, 285 Ky. 217, 147 S. W. 2d 83; *Rogers v. Carleton*, 188 Okla. 470, 110 P. 2d 908; *Rider v. City of Batesville*, 220 Ark. 31, 245 S. W. 2d 822; *Sawyer v. City of San Antonio*, 149 Tex. 408, 234 S. W. 2d 398.

"However, public policy requires that there be certainty as to who are and who are not public officers. Otherwise, there is doubt and confusion which leads to needless litigation. 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. Cf.: *People ex rel. McCarthy v. Barrett*, 365 Ill. 73; *Pace v. People ex rel. McMeen*, 50 Ill. 432.

"In the event the rights 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."

A township assessor is elected pursuant to Illinois Revised Statutes 1959, Chapter 139, Paragraph 60. Town officers qualify pursuant to Paragraph 84 of said Chapter 139, which is as follows:

"Every person elected or appointed to the office of supervisor, town clerk, assessor, commissioner of highways or collector, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace or town clerk, the oath or affirmation of office prescribed by the constitution, which shall, within eight days thereafter be filed in the office of the town clerk."

Smith-Hurd Illinois Annotated Statutes 1961, Supplement No. 7, Chapter 139, Paragraph 96 provides as follows:

"Whenever any town fails to elect the proper number of town officers to which such town is entitled by law, or when any person elected to any town office fails to qualify, or whenever any vacancy occurs in any town, from death, resignation, removal from the town, or other cause, the board of auditors of the township shall fill the vacancy by appointment, by warrant under their hands and seals; and the persons so appointed shall hold their respective offices during the unexpired term of the persons in whose stead they have been appointed, and until others are elected or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected or appointed for a full term of office."

Under this provision the Board of Auditors fills a vacancy in a township office for the unexpired term. There is no statutory provision for filling a vacancy in a township office by special election.

Based upon the facts as presented by your letter, the incumbent resigned the office which will expire on December 3, 1961, as well as the one beginning on January 1, 1962, and under the statute the Board of Auditors had the power to fill both vacancies by appointment.

The assessments made by the appointed assessor during the term commencing January 1, 1962, will be valid. Even if it could be held that the appointed assessor was a *de facto* officer, nevertheless, the assessments would be valid. *People v. Board of Review*, 19 Ill. 2d 424.

(No. 155—November 27, 1961)

**COUNTIES AND COUNTY BOARDS—Power to Lease Civic Auditorium from Public Building Commission and Levy Taxes Therefor.** A county lacks the statutory authority to lease a civic auditorium building as it is not for a corporate purpose.

**STATUTES CONSTRUED**—Illinois Revised Statutes 1959, Chapter 34, Paragraph 3318.

Hon. William E. Nash, State's Attorney, Winnebago County, Rockford:

I have your communication of November 13, 1961, wherein you state as follows:

"The County of Winnebago has created a 'Public Building Commission' under the provisions of Chapter 34 Sections 3301-3325, and the City of Rockford has joined in the formation of said commission.

"The commission contemplates construction of a civic auditorium building and your opinion is requested with respect to the following questions:

"1. If the Public Building Commission builds a civic auditorium, would the County of Winnebago have the power to enter into a lease with the commission for the use of the auditorium and to levy a tax for the payment of rent to the commission under the lease?"

"2. If your answer to the above is in the affirmative, would the County of Winnebago then have the power to sub-let the use of the auditorium to private persons and organizations and to charge rental therefor, or must the use of the auditorium be limited to purely public purposes for which no rent can be charged?"

A county has no inherent power to levy taxes. Its entire authority is derived from legislative grant. *People v. A & E R. R. Co.* 359 Ill. 440.

Illinois Revised Statutes 1959, Chapter 34, Paragraph 3318 authorizes a county to levy a tax when it has entered into a lease with a public building commission. There can be no question that a county can enter into a lease with a public building commission for proper rooms and offices for the accommodation of the several courts of record of the county and for the various county officers as it is the statutory duty of the County Board to provide space for such officers. (Illinois Revised Statutes 1959, Chapter 34, Paragraph 432.)

The question to determine is whether a county can lease a civic auditorium.

The powers of a county are well stated by our Supreme Court in the case of *LeFevre v. County of Lee*, 353 Ill. 30, where the court said:

"A county is a creature of the statute and has no powers except those expressly conferred upon it by statute or such powers as are necessary to carry out the powers so conferred. The powers of county boards over county funds are to be found in the 25th section of the Counties act. They are, (1) the care and custody of real and personal estate owned by the county; (2) to manage the county funds and county business except as otherwise specifically provided; and (3) to examine and settle all accounts against the county and all accounts concerning the receipts and expenditures of the county. While it is empowered to appropriate money it may not appropriate funds for other than county purposes. It has no power to appropriate, give away or dispose of county funds or property for a purpose not authorized by law. (*Scates v. King*, 110 Ill. 456; *Perry v. Kinnear*, 42 id. 160; *Colton v. Hanchett*, 13 id. 615)"

It is to be noted that a county cannot appropriate county funds for a purpose not authorized by law.

I have carefully examined the powers of a county and find no provision which would authorize the leasing of a civic auditorium. It, therefore, follows that a county lacks the statutory authority to lease a civic auditorium building as it is not for a corporate purpose.

In view of this conclusion, it becomes unnecessary to pass upon your second question.

(No. 156—November 27, 1961)

**PENSIONS—Teachers' Retirement System—Summer School Teaching.** Under existing statutory provisions, summer school teaching does not constitute service to be considered by the Teachers' Retirement System for retirement purposes.

**PENSIONS—Teachers' Retirement System—Loss of benefits.** A retired teacher drawing an annuity may teach during the summer months for a board of education and also be employed not to exceed 75 days during the regular school term, without loss of any retirement benefits from the Teachers' Retirement System.

**PENSIONS—Teachers' Retirement System—Recomputation of annuity.** A retired teacher receiving an annuity, who returns to teaching, is eligible for a recomputation of the retirement allowance upon teaching 170 days within the regular school term. Summer school teaching is not teaching service within the regular school term.

**STATUTORY CONSTRUCTION—The word "equivalent" means "equal in value, force, measure, volume, power and effect."**

**STATUTORY CONSTRUCTION—Words and provisions used in the original act or section are presumed to be used in the same sense in the amendment.**

**STATUTES CONSTRUED—School Code, approved March 18, 1961; Sections 10-19, 10-22.33, 24-1, 25-18, 25-47, 25-52, (1961 Smith-Hurd Illinois Annotated Statutes, special pamphlet, chapter 122, paragraphs 10-19, 10-22.33, 24-1, 25-18, 25-47, 25-52; Illinois Revised Statutes 1959, chapter 122, paragraphs 6-13, 22-1, 25-46.**

Hon. Aubrey J. Holmes, Secretary, Teachers' Retirement System, Springfield.

I have your letter of November 7, 1961, wherein you refer to a number of provisions contained in the new School Code, approved March 18, 1961; (1961 Smith-Hurd Illinois Statutes Annotated, Special Pamphlet, chapter 122, paragraphs 1-1, *et seq.*), and submit the following questions for my opinion thereon:

"Question 1.

"Since summer school teaching, apparently, has been legalized, shall the Retirement System consider such teaching services for retirement purposes?"

"If so, shall any summer school of less than four clock hours daily be considered for retirement purposes."

"Question 2.

"If a teacher teaches regularly at four or more clock hours per day, daily, during the summer months, may both the time and income be applied toward retirement benefits?"

"Question 3.

"Since 170 days constitutes a full teaching year within the legal school year, may any teaching days at four or more clock hours per day apply to teaching days during the regular school term to constitute 170 or more days and thus equal a full school year?"

"Question 4.

"If the teacher is eligible to contribute for summer school teaching of 4 or more clock hours per day and retires or deceases at the expiration of such summer school teaching, what salary rate shall the Retirement System apply in the determination of benefits? For example: If a teacher is teaching full time during July and August, outside of the regular school term, at salary rate of \$400 per month, shall this \$400 per month be the rate on which benefits are calculated?"

"If this \$400 per month is not the rate we may use in determining benefits, is it lawful to add the summer income to the contractual rate for the ensuing school year in order to determine a salary rate for benefit purposes?"

"If the teacher, however, is teaching during the months of July and August, and is neither under tenure nor under a contractual basis for the ensuing school term, may her \$400 monthly rate during the summer term be applied to her immediate past year's salary rate on which benefits may be paid?"

"Question 5.

"If a teacher teaches during July and August, summer school teaching, and teaches to September 15, would she have established a salary rate which constitutes a rate only for the regular school term, or would the rate constitute both income for summer school teaching and the annual rate for the regular school term?"

"Question 6.

"May a substitute teacher apply summer school teaching to other substitute days taught during the regular school term?"