MEMORANDUM

To: Ogle County Board
From: ASA Scott P. Robinson
Date: 4/13/10
Subject: Alteration of manner of selecting County Board chairman

Members of the Ogle County Board:

I have been asked to advise the County Board regarding the manner or manners in which the selection process of the County Board Chairman may be altered. The County Board Chairman is currently appointed to that position by the County Board, but the question has arisen as to how the County Board may choose to allow for the direct election of the County Board Chairman by the voters and what the ramifications of doing so might be.

There are a few ways in which the County Board may alter the selection of the County Board Chairman from an appointed to an elected position. First, under the provisions of 55 ILCS 5/2-3007, the County Board may simply decide, when it reapportions the County (as it must every 10 years), that the Chairman is to be elected. This would be determined as part of the reapportionment process. The statute provides that the Chairman can be elected either as a County Board member, or as one who is the Chairman of the County Board, but not also a County Board member. In the case of the Chairman who is also a County Board member, the Chairman's term is two years. In the case of a Chairman who is not a member of the County Board, the term is four years.

A second way in which the County Board Chairman position might be changed to an elected position is by referendum. See 10 ILCS 5/28-7 and Article 7, Section 4 of the Illinois Constitution. As with any referendum submitting a public question to the voters of the County, there are two ways of placing the question on the ballot: by resolution of the County Board, or by petition signed by 10% or more of the number of registered voters in the County. Such a referendum asking the voters whether the County Board Chairman shall be elected would be binding as opposed to advisory. It is not entirely clear, but it appears from the Illinois Constitution that the default term of a County Board Chairman elected by the voters subsequent to the passage of a referendum calling for such an election would be four years unless the referendum specified otherwise. It would also appear that, subsequent to such an election, the voters could alter the term of office by referendum or the County Board could alter the term by ordinance. Of course, such an alteration in the term would not affect someone who had been elected County Board Chairman, but would only affect future elections.

I believe that the County Board also has the authority, under Article 7, Section 4 of the Illinois Constitution, to pass an ordinance providing that the County Board Chairman shall be elected rather than appointed. Again, if the ordinance does not specify, the default term is four

years. The County Board could alter the term by ordinance if it chose. The term of a future elected County Board Chairman could also be modified by referendum, presumably even if the County Board Chairman were to be elected by virtue of the County Board having passed an ordinance (as opposed to the voters having passed a referendum) calling for the election of the County Board Chairman.

Because of the timing of general elections of County Board members coinciding with the term of appointment for the County Board Chairman position under the current Chairman selection process, it is unlikely that an issue of "overlapping" terms will arise. In other words, the commencement of a term of an elected County Board Chairman is unlikely to interrupt the term of a previously appointed Chairman, because of the election cycle. If this situation did arise, however, it is my opinion that the elected Chairman would take the office from the appointed Chairman.

As far as the pay and duties of an elected County Board Chairman go, the law does not provide for any difference between an elected and an appointed County Board Chairman. The County Board has the ability to change the pay, powers, and duties of an elected Chairman in the same manner as an appointed Chairman. If the County Board wished, it could establish the Chairman as a full-time position, but this does not automatically occur simply by virtue of the election of a Chairman as opposed to appointment.

I think this summarizes our answers to the questions raised about this issue. Please let me know if there is anything else our office can do to assist in this matter.

–Scott P. Robinson
Assistant State's Attorney