

**LEGAL OPINION REGARDING VACANCY IN THE DEMOCRATIC
NOMINATION FOR UNITED STATES HOUSE OF REPRESENTATIVES
MEMBER IN THE ILLINOIS 17TH CONGRESSIONAL DISTRICT**

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Introduction

This opinion discusses three legal questions resulting from the vacancy in the Democratic nomination for House of Representatives member in the 17th Congressional District. To the best of my knowledge, such a vacancy has never previously occurred in Illinois following a primary election. As a result, there are no court case precedents that directly address the questions I have answered.

My opinion is based upon a careful examination of the relevant statutes and an application of general principles of statutory interpretation as found in case precedents. Legal issues often generate debate, with lawyers arguing opposing points of view and appellate judges frequently writing conflicting opinions.

Ultimately, whether an opinion arrives at a correct result depends upon the persuasiveness of the reasons supporting it. That is why I have attempted to set forth the reasons for my conclusions in some detail and, hopefully, with clarity.

I.

**ONLY ELECTED PRECINCT COMMITTEEMEN MAY VOTE FOR A
CANDIDATE TO FILL THE VACANCY IN NOMINATION.**

The Statute At Issue

Article 7 of the Illinois Election Code (10 ILCS 5/1-1 *et.seq.*¹) controls the method of filling vacancies in nomination for members of the United States House

¹ “ILCS” refers to the Illinois Compiled Statutes, which is the official compilation of Illinois statutes by the State of Illinois. The number preceding “ILCS” is the cited chapter of the Compiled Statutes, the number following “ILCS” and preceding the slash is a reference to the number of the act, and the numbers following the slash are to the article and section numbers, respectively, in the chapter.

of Representatives.² The Code, 10 ILCS 5/7-7, creates a congressional committee “for the purpose of making nominations” when a vacancy in nomination occurs. Then 10 ILCS 5/7-8(e) describes this congressional committee in greater detail. In pertinent part, that section reads:

Congressional Committee

The congressional committee of each party in each congressional district shall be composed of the chairmen of the county central committees of the counties composing the congressional district, **except** that in congressional districts wholly within the territorial limits of one county, or partly within 2 or more counties, but not coterminous with the county lines of all of such counties, **the precinct committeemen ... of the party representing the precincts within the limits of the congressional district, shall compose the congressional committee.** A State central committeeman in each district shall be a member and the chairman or, when a district has 2 State central committeemen, a co-chairman of the congressional committee, but shall not have the right to vote except in case of a tie.

In the organization and proceedings of congressional committees composed of precinct committeemen ... each precinct committeeman shall have one vote for each ballot voted in his precinct by the primary electors of his party **at the primary at which he was elected, ...** . (Emphasis added.)

A Legislative Preference For Elected Precinct Committeemen, Not County Chairmen, To Choose The Candidate

Initially, it should be observed from the statutory language that all congressional districts in Illinois, including the 17th Congressional District, are controlled by the exception language in the first paragraph. That is, the 17th Congressional District, for example, lies “partly within two or more counties and is not

² Even though the vacancy in nomination has occurred with respect to a **federal** (not a **state**) official, Illinois statutes are applicable because the Constitution of the United States (Article I, § 4) directs that “the Legislature” of each state shall prescribe the manner of holding elections for Representatives.

coterminous with the county lines of all such counties.” Because the exception language applies, precinct committeemen, and not county chairmen, are the members of the congressional committee.

The statute in the first three lines, which makes county chairmen the sole members of congressional committees, does not apply at the present time in Illinois at all, and I am unaware if it ever applied to an Illinois congressional district.

Regardless, in our situation the statute expresses a legislative preference for precinct committeemen over county chairmen to fill vacancies in nomination.

This legislative preference is further indicated in the remainder of the first paragraph of the statute. It states that “the precinct committeemen ... representing the precincts” shall comprise the committee. At this juncture, the statute does not specifically state whether the precinct committeemen are limited to those who are elected, but it does refer to committeemen “representing” the precincts. That language implies a representation of the voters of the precincts who elected them.

This implication is then made explicit in the second paragraph where, in authorizing the committeemen to have one vote for each ballot voted in his precinct by the primary electors of his party, the statute bestows that right only on committeemen who were “**elected**” at that same “primary.”³ (Emphasis added.) Had the drafters of the statute not intended to limit the casting of a weighted vote to elected committeemen, the statute would have been written differently. Indeed, the

³ Additionally, applicable rules of statutory interpretation in case precedents indicate that the term “precinct committeemen” in the first paragraph of the quoted section must be read together with the requirement that the committeemen be “elected” in the second paragraph. See *East St. Louis v. Union Electric Co.*, 37 Ill.2d 537, 542 (1967)(the “strict meaning” of “a word or phrase” “is not as important as the sense in which it was used”); also see *City of Elmhurst v. Buettgen*, 394 Ill. 248, 253 (1946)(“a statute ... must receive a sensible construction, even though such construction qualifies the universality of its language.”).

drafters did write it differently for committeemen serving on judicial subcircuit committees. The rules for those committees are set forth in 10 ILCS 5/7-8(g-1):

... each precinct committeeman shall have one vote for each ballot voted in his precinct or part of a precinct, as the case may be, in the judicial subcircuit by the primary electors of his party **at the primary election immediately preceding the meeting of the judicial subcircuit committee**; (Emphasis added.)

The foregoing statutory section omits entirely the language — “**at the primary at which he was elected**” found in the Congressional Committee section — and therefore would permit validly appointed committeemen to cast a weighted vote. (Emphasis added.) If the drafters had intended to authorize the casting of a weighted vote by appointed congressional committeemen, that section would have contained the same language as the foregoing section.

Because it did not, it must receive a different interpretation. Otherwise the differences in language would be meaningless. However, “it is a fundamental rule of statutory construction that each word, clause, and sentence in a statute must, if possible, be given some meaning.”⁴

The Appointment Statute

There is one other paragraph of the statute that bears on the subject issue. 10 ILCS 5/7-9(i), in its entirety, states:

Except as otherwise provided in this Act, whenever a vacancy exists in the office of precinct committeeman because no one was elected to that office or **because the precinct committeeman ceases to reside in the precinct** or for any other reason, the chairman of the county central committee of the appropriate political party **may fill the vacancy in such office by appointment of a qualified resident of the county and the appointed precinct**

⁴ *Midsouth Chemical Corp. v. Carpentier*, 14 Ill.2d 514, 519 (1958).

committeeman shall serve as though elected; however, no such appointment may be made between the general primary election and the 30th day after the general primary election. (Emphasis added.)

The question that the foregoing paragraph presents is whether the statement that “the appointed precinct committeeman shall serve as though elected” applies to serving on a congressional committee with the weighted vote, or whether the language previously quoted allowing only **elected** precinct committeeman to vote controls, so as to come within the opening language of the paragraph that states “**Except as otherwise provided in this Act, ...**” (Emphasis added.) For the reasons hereafter discussed, I have concluded that the language of 10 ILCS 5/7-8 limiting the right to cast a weighted vote to elected precinct committeemen is “**as otherwise provided in this act**” and therefore an exception to the above quoted paragraph. (Emphasis added.)

A Legislative Preference For Democratic Values

My reasons for this conclusion are based upon established principles of statutory interpretation. The Illinois Supreme Court has often summarized these basic principles. Recently it said:

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. ... The best evidence of legislative intent is the statutory language. When possible, the court should interpret the statute according to the plain and ordinary meaning of the language. ... **In giving effect to legislative intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought.**⁵ (Emphasis added.)

⁵ *People v. Donoho*, 204 Ill.2d 159, 171-172 (2003).

As stated by the Supreme Court, the objects and purposes of the subject legislation must be considered.⁶ The object in this situation is to select a new congressional candidate, and presumptively, to do so in the most democratic manner feasible, given that our statutes do not authorize a second primary where the voters of the district could decide who should fill the vacancy. Obviously, a second primary would be the most democratic method to fill the vacancy.

I have presumed that the General Assembly preferred as democratic a process as possible because of its choice to have precinct committeemen, as opposed to single county chairmen from each county, choose the candidate. This choice opens the process to greater input from the voters of each precinct who elected their committeemen.

The weighted vote further implies a preference for democratic values because a committeeman's vote is tied to the strength or weakness of his party's vote at his precinct. Finally, in the absence of a clearly expressed intent to the contrary, in a nation dedicated to the fostering of democratic values at home and abroad, it makes little sense to conclude that the General Assembly intended to opt for a system that was the least democratic.

⁶ Additionally, if the exception language does not apply to elected precinct committeemen who serve on the Congressional Committee, there would be no situation where that language would ever apply and would therefore be meaningless. Again, see *Midsouth Chemical Corp. v. Carpentier*, 14 Ill.2d 514, 519 (1958), which holds that words in a statute must "be given some meaning."

While the exception language applies to appointed precinct committeemen with respect to congressional committees, there are other committees where most probably the appointees could cast a weighted vote. As noted, clearly no language would preclude them from doing so when serving on a judicial subcircuit committee and most probably on a municipal central committee. See 10 ILCS 5/7-8 and discussion at pp.3-4, *supra*.

Moreover, service on a congressional committee involves only one task — the selection of a candidate to fill a political party's vacancy in nomination for Congress. Other more local committees might transact business in addition to selecting candidates. In those situations, and even where local candidates are selected, the considerations hereafter discussed may have limited application. In any event, what occurs with respect to other committees is not presently at issue. Those situations would have to be resolved whenever and if such problems arise on a case by case basis.

The Appointment Process Substantially Undermines Democratic Values.

Appointed precinct committeemen have no relationship or connection to the voters of their precincts. They were not elected by precinct voters and they owe their allegiance to the county chairmen who appointed them. Having them cast a weighted vote on behalf of their precincts does not enfranchise the voters of their precincts. Instead, it has the opposite effect, distorting the total vote so as to reflect the views of the county chairs who appointed them and not the voters of the precincts.

While it is always possible for a particular appointee to act independently and buck the chairman who appointed him, that slim possibility cannot serve as a basis for drawing general conclusions. In interpreting statutes that deal with party politics, the law does not require naiveté.

These general conclusions have been factually confirmed in our particular situation. It has been widely reported in the press that at least one county chairman has publicly stated he will only appoint precinct committeemen who are committed to voting for the candidate of his choice. Moreover, most of his appointees do not reside within the precincts for which they were appointed. As noted, these appointees, regardless of where they reside, have no relationship to or connection with the voters of the precincts whose weighted vote they will be casting.

While the example cited supports my analysis, this opinion does not depend on the particular facts of the example. In my judgment, what has been reported in the press simply confirms what is inherently part and parcel of a political appointment process. Therefore, the participants in that process should not be faulted for doing what typically occurs in a political process.

Rather, I have simply concluded that the appointment process, which will, in effect, allow county chairmen to control the nomination to the extent of their appointments, is not the system authorized by statute. As observed, the statute favors a system that is not controlled by the county chairmen and which attempts, in so far as feasible, to provide for a more democratic selection process.

This preference for a more democratic selection process found in the congressional committee section of the statute reflects the spirit of the law, if not its precise letter. The Illinois Supreme Court has frequently observed that a “situation which is within the object, **spirit** and the meaning of a statute is regarded as within the statute, even though it may not fall within the letter.”⁷ (Emphasis added.)

To the extent the county chairmen would control that process, the spirit of the democratic values described would be substantially undermined. As a result, appointed committeemen are not authorized to cast a weighted vote.

II.

COUNTY CHAIRMEN HAVE NO LEGAL AUTHORITY TO APPOINT PRECINCT COMMITTEEMEN WHO DO NOT RESIDE IN THE PRECINCTS THAT THEY ARE TO REPRESENT, AND THEREFORE SUCH APPOINTMENTS ARE INVALID.

As noted, several appointed precinct committeemen do not reside in the precincts they are to represent. In my judgment, these appointments are clearly invalid for all purposes. They were apparently made because 10 ILCS 5/7-9(i) states that county chairmen may fill vacancies by appointing “**a qualified resident of the county.**” (Emphasis added.) (See full text of this statutory section at pp.4-5, *supra*.)

⁷ *Harvel v. City of Johnston City*, 146 Ill.2d 277, 166 Ill.Dec. 888, 891, 586 N.E.2d 1217, 1220 (1992). Also see *Gill v. Miller*, 94 Ill.2d 52, 67 Ill.Dec. 850, 853, 445 N.E.2d 330, 333 (1983) to the same effect.

Seemingly, this language fostered a belief that any “resident of the county” could be appointed regardless of his or her precinct residency.

But an appointee is not “qualified” if he does not reside in the precinct he is to represent. This occurs because the same section of the statute also states that “a vacancy exists in the office of precinct committeeman ... **because the precinct committeeman ceases to reside in the precinct.**” (Emphasis added.)

As a result, all of the appointed committeemen who do not reside in the precincts for which they were appointed “cease[d] to reside” in their precincts from the moment of their appointments. Any other interpretation of the statute would render it absurd, as it would then authorize precinct committeemen appointed by county chairs to reside outside their precincts, while requiring committeemen elected by the voters to always reside in their precincts.

No intelligible rationale exists for a distinction that bestows greater latitude on an appointing authority in choosing a person to represent the electorate than the electorate itself. The Illinois Supreme Court has long held that statutes are never to be interpreted so as to produce an absurd result.⁸

III.

VOTES MAY BE CAST FOR MORE THAN ONE CANDIDATE.

I have been asked whether or not a precinct committeeman who casts a weighted vote may split his votes so as to cast some votes for one candidate and other votes for other candidates. The statutes contain no language that governs this

⁸ *In re D.D.*, 196 Ill.2d 405, 418-419 (2001); *East St. Louis v. Union Electric Co.*, 37 Ill.2d 537, 542 (1967); and *DuPage County Election Commission v. Board of Elections*, 345 Ill.App.3d 200, 279 Ill.Dec. 695, 701, 800 N.E.2d 1278, 1284 (2nd Dist. 2003).

subject. Nonetheless, my opinion is that such votes may be split in any manner that a precinct committeeman sees fit.

As discussed earlier, the weighted vote reflects the ballots cast at the primary at which the precinct committeemen were elected. They are acting on behalf of those voters, and the process is a substitute for a party primary. Since it would be highly unusual for a candidate to receive a unanimous vote in any precinct at a party primary, no reason exists to preclude precinct committeemen from acting in a similar manner as voters at a primary might act.

As a result, precinct committeemen may cast their ballots for as few or as many candidates as they desire.

As noted in the Introduction, the opinions I have given are based upon my examination of the applicable statutes and a study of case law dealing with statutory interpretation. Those opinions are also based on my 48 years of experience in the practice of law, which includes experience in election law cases and substantial appellate work where case law is fashioned. A copy of my resume' is available upon request.

Respectfully submitted,

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