

Hiring A Township Attorney

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Who can hire the township attorney? This is question which comes up when the township board and supervisor have adverse positions. Townships have the statutory authority to hire an attorney, for the township. 60 ILCS 1/70-37. However, there is no requirement that the township actually hire an attorney. The process for hiring the Township Attorney is specifically set forth in the Township Code. The Code provides that “*The supervisor, with the advice and consent of the township board, may appoint a township attorney.*” 60 ILCS 1/70-37.

The question of who can appoint the township attorney has recently been addressed by the Illinois Appellate Court¹. In *Moore v. Grafton Tp. Bd. of Trustees* 2011 WL 3524417 (2nd Dist. 2011) the township board did not give its “consent” to the appointment an attorney nominated by the supervisor. The board rejected the supervisor’s nomination for attorney by a vote of four (4) to one (1). The one vote cast in favor of appointing the attorney was made by the supervisor.

The supervisor, Moore, sought a mandatory injunction to compel the township board to hire the attorney she had nominated. The trial court entered a mandatory injunctive order compelling the township trustees to confirm the appointment of the supervisor’s nomination for township attorney. The trial court stayed enforcement pending appeal. Needless to say the township board appealed.

The Second District Court of Appeals reversed and remanded the trial court’s decision finding that the trial court “acted in derogation of both the separation-of-powers doctrine and the plain language of the controlling statute . . .” *Moore v. Grafton Tp. Bd. of Trustees* 2011 WL 3524417 (2 Dist. 2011). The Court’s analysis of this issue was twofold in reaching its decision. First the Court relied on well established law that “units of local government are creatures of the legislature. See *LaSalle National Trust, N.A. v. Village of Mettawa*, 249 Ill.App. 3d 550, 575 (1993). . . . [and the court’s] role in interpreting a legislative enactment is to ascertain and give effect to the intent of the legislature. *Rosenzweig v. Illinois State Board of Elections*, 409 Ill.App. 3d 176, 180 (2011). The best evidence of that intent is the plain language of the enactment itself. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 216 (2008).” The court held that the plain reading of the statute required the township board to consent to the appointment of a township attorney. After, this initial analysis, the court found that the trial courts decision “was plainly at odds with the statute.” *Moore v. Grafton Tp. Bd. of Trustees* 2011 WL 3524417 (2 Dist. 2011).

The Court’s analysis of the statute (60 ILCS 1/70-37) then went beyond the issue of the plain reading of the statutory language to determine if the trial could have even interceded in this matter. It found that the township board’s statutory duty of confirming the township attorney was not a ministerial act but a discretionary legislative act. As a discretionary legislative act the appointment of a township attorney is subject to the “political question doctrine”. The political question doctrine stands for the proposition “that certain questions, deemed political in nature,

¹ In a currently unpublished opinion. *Moore v. Grafton Township Board*, 2011 WL 3524417 (2nd Dist. August 8, 2011).

are not justiciable.” *Murphy v. Collins* 20 Ill.App. 3d 181, 196 (1974). The trial court was therefore barred from interfering in the decision of a legislative body, absent specific language in the statute which allowed the court to intervene. The Court further held that under the separation of powers doctrine that the courts must respect units of local government. *Moore v. Grafton Tp. Bd. of Trustees* 2011 WL 3524417 (2 Dist. 2011).

In conclusion, the statutory provisions concerning the hiring of a township attorney must be strictly construed. The supervisor with the “advice and consent” of the board may appoint a township attorney. Absent the consent of the board the supervisor can not independently appoint an attorney, nor can the court compel the board to give its consent.