

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 3-9008 as follows:

6 (55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

7 Sec. 3-9008. Appointment of attorney to perform duties.

8 (a) (Blank).

9 (a-5) The court on its own motion, or an interested person
10 in a cause or proceeding, civil or criminal, may file a
11 petition alleging that the State's Attorney is sick, absent, or
12 unable to fulfill his or her duties. The court shall consider
13 the petition, any documents filed in response, and if
14 necessary, grant a hearing to determine whether the State's
15 Attorney is sick, absent, or otherwise unable to fulfill his or
16 her duties. If the court finds that the State's Attorney is
17 sick, absent, or otherwise unable to fulfill his or her duties,
18 the court may appoint some competent attorney to prosecute or
19 defend the cause or proceeding.

20 (a-10) The court on its own motion, or an interested person
21 in a cause or proceeding, civil or criminal, may file a
22 petition alleging that the State's Attorney has an actual
23 conflict of interest in the cause or proceeding. The court

1 shall consider the petition, any documents filed in response,
2 and if necessary, grant a hearing to determine whether the
3 State's Attorney has an actual conflict of interest in the
4 cause or proceeding. If the court finds that the petitioner has
5 proven by sufficient facts and evidence that the State's
6 Attorney has an actual conflict of interest in a specific case,
7 the court may appoint some competent attorney to prosecute or
8 defend the cause or proceeding.

9 (a-15) Notwithstanding subsections (a-5) and (a-10) of
10 this Section, the State's Attorney may file a petition to
11 recuse himself or herself from a cause or proceeding for any
12 other reason he or she deems appropriate and the court shall
13 appoint a special prosecutor as provided in this Section.

14 (a-17) In a county exceeding a population of 3,000,000, if
15 the court determines that the appointment of a special
16 prosecutor is required under subsection (a-10) or (a-15), the
17 court shall request the Office of the State's Attorneys
18 Appellate Prosecutor to serve as the special prosecutor where
19 the cause or proceeding is an officer-involved death, as that
20 term is defined in Section 1-5 of the Police and Community
21 Relations Improvement Act. If the Office of the State's
22 Attorneys Appellate Prosecutor accepts the request, the
23 State's Attorneys Appellate Prosecutor shall be appointed by
24 the court and shall have the same power and authority in
25 relation to the cause or proceeding as the State's Attorney
26 would have had if present and attending to the cause or

1 proceedings.

2 (a-20) Except as provided in subsection (a-17), prior ~~Prior~~
3 to appointing a private attorney under this Section, the court
4 shall contact public agencies, including, but not limited to,
5 the Office of Attorney General, Office of the State's Attorneys
6 Appellate Prosecutor, or local State's Attorney's Offices
7 throughout the State, to determine a public prosecutor's
8 availability to serve as a special prosecutor at no cost to the
9 county and shall appoint a public agency if they are able and
10 willing to accept the appointment. An attorney so appointed
11 shall have the same power and authority in relation to the
12 cause or proceeding as the State's Attorney would have if
13 present and attending to the cause or proceedings.

14 (b) In case of a vacancy of more than one year occurring in
15 any county in the office of State's attorney, by death,
16 resignation or otherwise, and it becomes necessary for the
17 transaction of the public business, that some competent
18 attorney act as State's attorney in and for such county during
19 the period between the time of the occurrence of such vacancy
20 and the election and qualification of a State's attorney, as
21 provided by law, the vacancy shall be filled upon the written
22 request of a majority of the circuit judges of the circuit in
23 which is located the county where such vacancy exists, by
24 appointment as provided in The Election Code of some competent
25 attorney to perform and discharge all the duties of a State's
26 attorney in the said county, such appointment and all authority

1 thereunder to cease upon the election and qualification of a
2 State's attorney, as provided by law. Any attorney appointed
3 for any reason under this Section shall possess all the powers
4 and discharge all the duties of a regularly elected State's
5 attorney under the laws of the State to the extent necessary to
6 fulfill the purpose of such appointment, and shall be paid by
7 the county he serves not to exceed in any one period of 12
8 months, for the reasonable amount of time actually expended in
9 carrying out the purpose of such appointment, the same
10 compensation as provided by law for the State's attorney of the
11 county, apportioned, in the case of lesser amounts of
12 compensation, as to the time of service reasonably and actually
13 expended. The county shall participate in all agreements on the
14 rate of compensation of a special prosecutor.

15 (c) An order granting authority to a special prosecutor
16 must be construed strictly and narrowly by the court. The power
17 and authority of a special prosecutor shall not be expanded
18 without prior notice to the county. In the case of the proposed
19 expansion of a special prosecutor's power and authority, a
20 county may provide the court with information on the financial
21 impact of an expansion on the county. Prior to the signing of
22 an order requiring a county to pay for attorney's fees or
23 litigation expenses, the county shall be provided with a
24 detailed copy of the invoice describing the fees, and the
25 invoice shall include all activities performed in relation to
26 the case and the amount of time spent on each activity.

1 (Source: P.A. 99-352, eff. 1-1-16.)

2 Section 10. The State's Attorneys Appellate Prosecutor's
3 Act is amended by changing Section 4.01 as follows:

4 (725 ILCS 210/4.01) (from Ch. 14, par. 204.01)

5 Sec. 4.01. (a) The Office and all attorneys employed
6 thereby may represent the People of the State of Illinois on
7 appeal in all cases which emanate from a county containing less
8 than 3,000,000 inhabitants, when requested to do so and at the
9 direction of the State's Attorney, otherwise responsible for
10 prosecuting the appeal, and may, with the advice and consent of
11 the State's Attorney prepare, file and argue such appellate
12 briefs in the Illinois Appellate Court and, when requested and
13 authorized to do so by the Attorney General, in the Illinois
14 Supreme Court.

15 (b) Notwithstanding the population restriction contained
16 in subsection (a), the ~~The~~ Office may also assist County
17 State's Attorneys in the discharge of their duties under the
18 Illinois Controlled Substances Act, the Cannabis Control Act,
19 the Methamphetamine Control and Community Protection Act, the
20 Drug Asset Forfeiture Procedure Act, the Narcotics Profit
21 Forfeiture Act, and the Illinois Public Labor Relations Act,
22 including negotiations conducted on behalf of a county or
23 pursuant to an intergovernmental agreement as well as in the
24 trial and appeal of said cases and of tax objections, and the

1 counties which use services relating to labor relations shall
2 reimburse the Office on pro-rated shares as determined by the
3 board based upon the population and number of labor relations
4 cases of the participating counties. In addition, the Office
5 and all attorneys employed by the Office may also assist
6 State's Attorneys in the discharge of their duties in the
7 prosecution, trial, or hearing on post-conviction of other
8 cases when requested to do so by, and at the direction of, the
9 State's Attorney otherwise responsible for the case. In
10 addition, the Office and all attorneys employed by the Office
11 may act as Special Prosecutor if duly appointed to do so by a
12 court having jurisdiction. Except when the appointment of a
13 Special Prosecutor is made pursuant to subsection (a-17) of
14 Section 3-9008 of the Counties Code, to ~~be~~ be effective, the
15 order appointing the Office or its attorneys as Special
16 Prosecutor must (i) identify the case and its subject matter
17 and (ii) state that the Special Prosecutor serves at the
18 pleasure of the Attorney General, who may substitute himself or
19 herself as the Special Prosecutor when, in his or her judgment,
20 the interest of the people of the State so requires. Within 5
21 days after receiving a copy of an order from the court
22 appointing the Office or any of its attorneys as a Special
23 Prosecutor, the Office must forward a copy of the order to the
24 Springfield office of the Attorney General.

25 (Source: P.A. 97-1012, eff. 8-17-12.)