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COOK COUNTY, ILLINOIS  
CIVIL ACTIONS BUREAU

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Honorable Sean M. Morrison  
Commissioner – 17<sup>th</sup> District  
Cook County Board of Commissioners  
118 North Clark Street, Room 567  
Chicago, Illinois 60602

**CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION**

*Re: Item 16-4229: Countywide Paid Leave Mandate*

Dear Commissioner Morrison:

We received your request for advice with regard to the legality of a proposed ordinance (Item 16-4229) that purports to institute a countywide paid sick leave mandate. You have also asked several ancillary questions. The issues presented, our conclusions and a discussion of the reasons supporting our conclusions follow.

**ISSUES AND CONCLUSIONS:**

**ISSUE 1**

**Question:** Does Cook County have the legal authority to enact a paid leave mandate for private employers in both unincorporated and incorporated areas of Cook County?

**Answer:** Our legal conclusion is that Cook County lacks the home rule authority to enact a paid leave mandate for employers whether countywide or within unincorporated Cook County.

**ISSUE 2**

**Question:** Can the State's Attorney's Office ascertain the status of lawsuits challenging the authority of other local governments around the country to enact paid sick leave mandates?

**Answer:** We believe that the outcomes of lawsuits in other states challenging sick leave mandates would not provide reliable guidance for Cook County with respect to Item 16-4229 because laws and state constitutions differ from state to state and as such, these other lawsuits offer little predictive value.

### ISSUE 3

**Question:** If Item 16-4229 were to be enacted and then challenged in court in a protracted lawsuit is there a quantifiable measurement in place that calculates the time and expense for the State's Attorney's Office to defend this litigation?

**Answer:** There is no way to precisely predict how long such a lawsuit would last or what resources would be expended in defending it. It has been our experience, however, that cases challenging Cook County's home rule authority have taken two or more years to be decided in the Circuit Court and one or more years to be decided in the Appellate Court. Typically, one or two Assistant State's Attorneys are assigned to lawsuits of this type.

### ISSUE 4

**Question:** Did the author of Item 16-4229 seek an opinion and/or guidance from the State's Attorney's as to its legality and merit?

**Answer:** We are not at liberty to say whether any other person has requested advice from us as to the legality of item 16-4229.

### ISSUE 5

**Question:** Does the imposition of a mandatory paid sick leave ordinance "fall within the county's domain of public safety or ministerial duties?"

**Answer:** We believe that this inquiry is related to Issue 1, above. As such, we reiterate our conclusion that Cook County does not have the home rule authority to enact a paid leave mandate for employers whether countywide or within unincorporated Cook County.

### DISCUSSION

Any analysis regarding the validity of home rule power must begin with the legal question of whether the problem pertains to local government and affairs, as required by section 6(a) of the 1970 Illinois Constitution. As a home rule unit of local government, the County may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public welfare and to tax. 1970 Ill. Const., art. VII, § 6(a). Notwithstanding the forgoing, if the home rule entity's action does not pertain to its "government and affairs" it is invalid and the local unit of government may not legislate in that field.

The Illinois Supreme Court's ruling in *Bernardi v. City of Highland Park*, 121 Ill. 2d. 1 (1988) directly calls into question the County's home rule authority to enact Item 16-4229. As a general rule, the authority of home rule units under section 6(a) is limited in those fields where the State of Illinois has the greater or more vital interest in regulating. In *Bernardi*, the Illinois

Supreme Court considered whether a home rule municipality must conform to the requirements of the Illinois Prevailing Wage Act. *Bernardi*, 121 Ill. 2d at 5. The court opined that “[e]stablishing minimum requirements to . . . improve working conditions has traditionally been a matter of State concern, outside the power of local officials to contradict, and it remains so today.” *Id.* at 14.

It must be emphasized that although the ordinance in question in *Bernardi* pertained to wages, the Supreme Court characterized the local legislation as an attempt to “interven[e] in the workplace.” *Id.* at 14. Identifying a long list of statutes as within the scope of State labor regulations, the court opined that a departure from them was beyond the authority of a home rule unit because the State has a far more vital interest in regulating labor conditions than did local entities. *Id.* at 15-16. The court concluded that allowing home rule units to govern “local labor conditions” would destroy the General Assembly’s “carefully crafted and balanced economic policies.” *Id.* at 16.

There is no existing Illinois law creating an obligation on employers to provide paid sick leave. We note that that two bills, House Bill 4420 and Senate Bill 2789, creating the Earned Sick Time Act [30 ILCS 805/8.38 (new)] were introduced in late 2014, which if enacted would have provided for minimum requirements with regard to a mandatory accrual of sick time. However, these bills died at the end of the legislative session and no further action has been taken by the legislature. As such, the clearest guidance with regard to this issue rests with our Supreme Court. Consistent with the Illinois Supreme Court’s decision in *Bernardi*, there is a substantial likelihood that Item 16-4229 would likely be found not to pertain to the County’s “government and affairs” within the meaning of Article VII, § 6(a).

Other states have enacted preemption laws prohibiting cities, counties, and other state municipalities from passing mandatory paid sick leave laws. At least eleven states – Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Mississippi, North Carolina, Tennessee, and Wisconsin have responded in this manner. For example, the Wisconsin state legislature, citing a need for statewide uniformity, passed a statute (W.S.A. § 103.10 (1m) (a)) nullifying a Milwaukee ordinance and prohibiting future local ordinances that required businesses to provide paid sick leave to employees. Notwithstanding the foregoing, it bears mentioning that constitutions and labor laws vary from state to state. Accordingly, the outcome of litigation in out-of-state jurisdictions in which local paid sick leave legislation is being challenged is not predictive of how Illinois courts would view the legality of Item 16-4229 were it to be enacted.

Were Item 16-4229 to be enacted and challenged, the State’s Attorney’s Office would be tasked with defending it in court. There is no way to precisely predict how long such a lawsuit would last or what resources would be expended in defending it. It has been our experience, however, that cases challenging Cook County’s home rule authority have taken two or more years to be decided in the Circuit Court and one or more years to be decided in the Appellate Court.

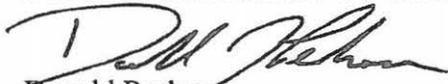
As to your remaining questions, we are not at liberty to say whether any other person has requested advice from us regarding Item 16-4229. Finally, we believe that your inquiry as to whether the imposition of a mandatory paid sick leave ordinance “fall[s] within the county’s

domain of public safety or ministerial duties” has been addressed by our above-stated conclusion that Item 16-4229 would not likely be found to pertain to the County’s “government and affairs” within the meaning of Article VII, § 6(a) of the Illinois Constitution.

We hope that we have been of assistance. Please feel free to call if you have any questions.

Sincerely,

ANITA ALVAREZ  
STATE’S ATTORNEY OF COOK COUNTY



Donald Pechois  
Chief, Civil Actions Bureau