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OFFICE OF THE INDEPENDENT INSPECTOR GENERAL
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January 15, 2014

Honorable Toni Preckwinkle
and Members of the Board of Commissioners
of Cook County, Illinois
118 North Clark Street
Chicago, Illinois 60602

Re: Independent Inspector General Quarterly Report (4th Qtr. 2013)

Dear President Preckwinkle and Members of the Board of Commissioners:

This report is written in accordance with Section 2-287 of the Independent Inspector General (OIIG) Ordinance, Cook County, Ill., Ordinances 07-O-52 (2007), to apprise you of the activities of this office during the time period beginning October 1, 2013 through December 31, 2013.

OIIG Complaints

The Office of the Independent Inspector General received a total of 101 complaints during this reporting period.¹ Please be aware that eight OIIG investigations have been initiated. This number also includes those investigations resulting from the exercise of my own initiative (OIIG Ordinance, Sec. 2-284(2)). Additionally, 29 OIIG case inquiries have been initiated during this reporting period while a total of 162 OIIG case inquiries remain pending at the present time. There have been seven matters referred to other enforcement or prosecutorial agencies for further consideration.

In connection with the recently opened investigations by the OIIG, the following is a general description of the issues under review:

¹ Upon receipt of a complaint, a triage/screening process of each complaint is undertaken. In order to streamline the OIIG process and maximize the number of complaints that will be subject to review, if a complaint is not initially opened as a formal investigation, it may also be reviewed as an "OIIG inquiry." This level of review involves a determination of corroborating evidence before opening a formal investigation. When the initial review reveals information warranting the opening of a formal investigation, the matter is upgraded to an "OIIG Investigation." Conversely, if additional information is developed to warrant the closing of the OIIG Inquiry, the matter will be closed.

- Post-SRO matter involving HHS;
- Misuse of grant funding;
- Time fraud and mismanagement (2 cases);
- Theft of controlled substances;
- Manipulation of hearing board process;
- Employment plan violation;
- Review of scholarship program.

The OIIG currently has a total of 71 matters under investigation. The number of open investigations beyond 180 days of the issuance of this report is 65 due to various issues including the nature of the investigation, availability of resources and prosecutorial considerations.

OIIG Summary Reports

During the 4th quarter of 2013, the OIIG issued 12 summary reports. The following is a general description of each matter and whether an OIIG recommendation for remediation/discipline has been adopted, if applicable due to the time permitted for corrective action. Specific identifying information is being withheld in accordance with the OIIG Ordinance where appropriate.

IIG09-0164. This investigation relates to a Post-SRO complaint filed pursuant to the *Supplemental Relief Order for the Cook County* (SRO) entered in connection with the *Shakman v. Cook County*, 69 C 2145 (N.D. Ill.) litigation. The complainant alleged that he was the victim of political discrimination in being passed over for promotion, receiving discipline, and various other employment actions while employed with the Juvenile Temporary Detention Center. The OIIG investigation revealed that the evidence failed to demonstrate that impermissible political factors were considered with respect to any employment decisions involving the complainant.

IIG12-0105. This investigation followed the FPD's response to a previous OIIG finding that a FPD *Shakman* Exempt employee had used a FPD vehicle for personal purposes. The FPD, in responding to the OIIG findings, conducted a separate review that was handled by the Director of Compliance (Shakman appointment). The OIIG has since recommended the FPD refrain from requesting the Director of Compliance to conduct such reviews. The FPD has agreed.

IIG12-0243. This investigation was initiated following a referral from a law enforcement agency regarding an engineer working at the Cook County Health and Hospitals System. Specifically, it was alleged that the engineer engaged in time theft by swiping in and leaving his assigned area and later returning to swipe out while the engineer was receiving overtime compensation without performing any work. This matter also included an allegation that the subject engineer approved his own overtime by signing a supervisor's name and placing his own initials next to the signature of the supervisor. The investigation confirmed the allegations that

the subject had, at least on occasion, left work to return to his home and on two occasions in 2013 executed overtime approval forms without authorization from his supervisors. This matter also involved a broader review of the department's practices that revealed institutional problems regarding staffing and overtime issues in the subject's department. Recommendations are pending with the department to correct these issues.

IIG13-0005. This investigation relates to a Post-SRO complaint filed pursuant to the *Supplemental Relief Order for the Cook County* (SRO) entered in connection with the *Shakman v. Cook County*, 69 C 2145 (N.D. Ill.) litigation. The complainant alleged that she was the victim of political discrimination when she was denied a promotion while working at the Cook County Medical Examiner's Office. The evidence from the OIIG investigation failed to demonstrate that impermissible political factors were considered with respect to management's decision not to promote the complainant.

IIG13-0116. This investigation relates to a Post-SRO complaint filed pursuant to the *Supplemental Relief Order for the Cook County* (SRO) entered in connection with the *Shakman v. Cook County*, 69 C 2145 (N.D. Ill.) litigation. The complainant alleged that he was the victim of political discrimination when he was terminated from employment as a clerk for the Cook County Health and Hospitals System. The evidence from the OIIG investigation failed to demonstrate that impermissible political factors were considered with respect to management's decision to terminate the complainant's employment as a disciplinary measure.

IIG13-0257. The OIIG initiated this investigation upon evidence that two employees of the Forest Preserve District ("FPD") had engaged in misconduct during an arbitration proceeding between the FPD and an FPD employee who had filed a Post-SRO Complaint pursuant to *Supplemental Relief Order for the Cook County* (SRO) entered in connection with the *Shakman v. Cook County*, 69 C 2145 (N.D. Ill.) litigation. The OIIG became aware of evidence which suggested the two subject employees, during the arbitration hearing, misrepresented the result of a previous FPD disciplinary proceeding. The evidence developed in the investigation revealed that the two subject employees had not engaged in misconduct. However, the OIIG determined that the FPD records regarding the above prior disciplinary proceeding were misleading. The OIIG recommended the FPD utilize best practices in recording the disposition of disciplinary action. The FPD has committed to doing so.

IIG13-0258. This matter related to the FPD's management of the FPD Resident Watchman Program. The OIIG determined that the FPD had failed for several months to enforce certain provisions of the Resident Watchman Program which called for the removal of Resident Watchmen who violated the rules of the Program. During the investigation the FPD made a

decision to selectively enforce the rules of the Program against particular Resident Watchmen although subsequently reversed course after consulting with this office. We believe that the Program is now being operated uniformly.

IIG13-0262. This investigation was initiated to determine whether a high ranking official in the Cook County Department of Facilities Management had violated Section 2-583(a) of the Ethics Ordinance and Section 44-54 of the Personnel Policies Ordinance prohibiting unlawful political activity. The evidence revealed that the official, in 2010, actively solicited political contributions while at work and directed other ranking staff members to solicit political contributions from subordinate employees within the Department of Facilities Management. The evidence further demonstrated that the official had, prior to 2010, developed a network of dozens of employees through which he coerced the political contributions from employees at various locations in Cook County. The network pressured employees, mostly tradesman in the various trades, to make political contributions to the recipient designated by the official. Many employees interviewed by this office felt they had no choice but to make the contributions for fear that they would suffer a negative employment action if they failed to cooperate. The evidence also demonstrated that the official violated Section 2-285 of the OIIG Ordinance by failing to be truthful in his statements to this office concerning his political activities in the workplace. The OIIG recommended the County terminate the official, who has since resigned.

IIG13-0275. This investigation revealed that a FPD employee who had been interviewed by OIIG Investigators violated Section 2-285 of the OIIG Ordinance by failing to cooperate with the investigation. Prior to being interviewed, the employee executed an OIIG Confidentiality Agreement which precluded her from divulging the content of the OIIG interview to any coworkers. The employee violated the Agreement by communicating the nature and content of the OIIG interview to another employee of the FPD immediately after the interview. The OIIG recommended the employee be suspended for a period of two days. The FPD issued a reprimand.

IIG13-0332. This investigation relates to a Post-SRO complaint filed pursuant to the *Supplemental Relief Order for the Cook County* (SRO) entered in connection with the *Shakman v. Cook County*, 69 C 2145 (N.D. Ill.) litigation. The complainant alleged that she was the victim of political discrimination when she was terminated from employment as a Ward Clerk at the Cook County Health and Hospitals System. The evidence from the OIIG investigation failed to demonstrate that impermissible political factors were considered with respect to the disciplinary action taken against the complainant.

IIG13-0370. This investigation was initiated as a collateral inquiry to another OIIG investigation and relates to an employee in the Cook County Health and Hospital System (“HHS”). The evidence developed in the investigation showed that HHS, in February of 2010, promoted an employee to a high ranking position for which he did not meet the minimum qualifications. The OIIG has recommended the employee be removed from the position and awaits the response of HHS.

IIG13-0388. In this matter, the OIIG issued a summary report recommending disciplinary action for a Highway Department employee (“Grievant A”) for falsifying his Cook County employment application by omitting a felony conviction. In response, the Human Resources unit of the Highway Department convened a Hearing Panel consisting of three Highway Department employees (“Hearing Panel”) and conducted a pre-disciplinary hearing for Grievant A. The OIIG was not notified of the hearing nor given an opportunity to participate in it. Grievant A was represented at the hearing by an attorney who was formerly a high ranking official in the Cook County Bureau of Human Resources at the time Grievant A applied for employment with Cook County. At the conclusion of its hearing, the Hearing Panel decided that Grievant A should not be issued any discipline citing Grievant A’s attorney who offered his recollection of a prior investigation into the same allegations. Questions have since arisen as to whether Grievant A used political clout to influence the decision of the Highway Department Hearing Panel such that the Hearing Panel was merely a “kangaroo court.” None of the members of the Hearing Panel in question are still employed by Cook County. However, we were able to locate and interview two of the three members of the Hearing Panel. Based on the preponderance of the evidence obtained in this investigation, the allegations regarding unlawful political influence in the hearing for Grievant A were not sustained. While both panel members interviewed noted problems with the hearing process, those problems were attributed to being “outmatched” or “ambushed” by Grievant A’s attorney and to the fact that the OIIG was not given notice of or an opportunity to participate in the hearing. Following the occurrence of this Hearing Panel decision, this office recommended that prior notice to the OIIG of disciplinary hearings involving OIIG cases be given to prevent future problems of this nature and better training for supervisors who participate on hearing panels.

OIIG Enabling Ordinance Jurisdictional Issues

The OIIG enabling ordinance specifically provides that the OIIG has the authority to “investigate corruption, fraud... under the Offices of the President as well as the separately elected County officials....” See Section 2-284(2) of the Independent Inspector General Ordinance, Cook County, Ill. Ordinances 07-O-52 (2007). As previously reported, this office has brought litigation in the Circuit Court of Cook County seeking a declaration from the court confirming the jurisdictional scope of the OIIG in a lawsuit involving the Office of the Assessor.² The Office of the Assessor sought to dismiss the litigation asserting, among other

² Although the Office of the Cook County Assessor is the subject of this litigation, other County offices have also declined to honor the jurisdiction of the OIIG in connection with OIIG

issues, that the OIIG Ordinance is unconstitutional. The Circuit Court has issued a Memorandum Opinion and Order upholding the jurisdictional scope of the OIIG Ordinance and found in favor of the OIIG on all issues. Attached is a copy of the court's decision for your reference. We believe that this is a significant ruling that will offer guidance in connection with future OIIG investigations. The Office of the Assessor is currently considering a potential appeal.

Activities Relating to Unlawful Political Discrimination

Political Contact Log

In April of 2011 the County implemented the requirement to file Political Contact Logs with the Office of the Independent Inspector General. The Logs must be filed by any County employee who receives contact from a political person or organization or any person representing any political person or organization where the contact relates to an employment action regarding any applicant or County employee. The IIG acts within his authority with respect to each Political Contact Log filed. From October 1, 2013 to December 31, 2013, the Office of the Independent Inspector General received one Political Contact Log.

Post-SRO Claims

In the last quarter, the OIIG has received one additional Cook County *Shakman* Post-SRO Complaint and has issued one Summary Report regarding a Cook County *Shakman* Post-SRO Complaint. Seven such Complaints remain pending.

Office of the Recorder

During the last quarter the OIIG has received no new Recorder *Shakman* Post-SRO Complaints. The OIIG continues to investigate two Recorder *Shakman* Post-SRO Complaints in addition to several other UPD cases in the office of the Recorder.

New UPD Investigations not the result of PCLs or Post-SRO Complaints:

Apart from the above PCL and Post-SRO activity, the OIIG has opened eight additional UPD inquiries during the last reporting period.

investigations: Office of the Recorder of Deeds, Office of the Cook County Treasurer, Sheriff's Merit Board and Board of Review.

OIIG Review per Employment Plans

Per the Cook County and Forest Preserve District Employment Plans (and prospective CCHHS Employment Plan) the OIIG performs various review functions particular to each Plan. The OIIG reviews the hire of *Shakman* Exempt employees, proposed changes to the Exempt Lists, proposed changes to Actively Recruited Position Lists, and proposed changes to Employment Plans. Where the OIIG objected to any of the above proposed changes, the OIIG, per the Employment Plans, engaged in discussions with the proposing entity in an effort to resolve OIIG concerns regarding the change. In the last quarter, the OIIG has performed the following functions in this regard and engaged in discussions where this office objected to any proposal:

1. Reviewed the hire of 26 *Shakman* Exempt employees;
2. Reviewed (and given the required approval or objection) to:
 - a. 55 proposed changes to the prospective CCHHS Employment Plan;
 - b. Five proposed amendments to the FPD Employment Plan;
 - c. Nine proposed amendments to the Cook County Exempt List;
 - d. One proposed change to the Cook County Employment Plan;
 - e. One proposed change to the Cook County Actively Recruited List.

Monitoring

The OIIG continues to monitor all disciplinary activities in the FPD and has begun monitoring selected disciplinary activities in Cook County. During the last reporting period, the OIIG monitored and evaluated 14 separate disciplinary sequences.

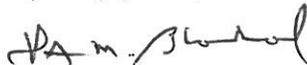
Miscellaneous OIIG Activities

Please be aware that I have recently been elected to serve as President of the Illinois Chapter of the Association of Inspectors General (AIG) effective January 1, 2014. The AIG is an organization of government investigative and audit professionals that was formed to establish a development network to provide professional training, encourage policy research and analysis and to promote the adoption of ethical standards in the conduct of government operations and to support Inspector General (IG) agencies. My tenure as President will afford the OIIG an opportunity to further establish this office in the IG community.

Thank you for your time and attention to these issues. Should you have any questions or wish to discuss this report further, please do not hesitate to contact me.

Hon. Toni Preckwinkle and Members of the
Board of Commissioners of Cook County
January 15, 2014
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Very truly yours,



Patrick M. Blanchard
Independent Inspector General
(312) 603-0364

cc: Ms. Kimberly Foxx, Chief of Staff
Ms. Tasha Cruzat, Deputy Chief of Staff
Ms. Laura Lechowicz Felicione, Special Legal Counsel
Dr. Ramanathan Raju, Chief Executive Officer, Health and Hospitals System
Ms. Elizabeth Reidy, General Counsel, Health and Hospitals System
Mr. Arnold Randall, General Superintendent, Forest Preserve District

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

PATRICK M. BLANCHARD, in his official
capacity as Independent Inspector General
of Cook County,

Plaintiff,

v.

JOSEPH BERRIOS, in his official capacity
as Assessor of Cook County,

Defendant.

Case No. 2013 CH 14300

Calendar 03

Hon. Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Defendant, Joseph Berrios, in his official capacity as Assessor of Cook County's Motion to Dismiss Plaintiff, Patrick M. Blanchard, Independent Inspector General of Cook County's Complaint pursuant to Section 2-619(a)(9) of the Illinois Rule of Civil Procedure. For the reasons that follow, Defendant's Motion is denied.

BACKGROUND

In or around 2007, the Board of Commissioners of Cook County (the "County") created the Office of the Independent Inspector General ("IG"). Cook County Code of Ordinances § 2-281 (2007) ("IG Ordinance"). The purpose of the IG is to "detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government." *Id.* at § 2-283. The duties of the IG include investigating "corruption, fraud, waste, mismanagement, unlawful political discrimination and misconduct in operations of County Government under the Offices of the President as well as the separately elected County officials . . ." *Id.* at § 2-284. Every County employee, official and agent has a duty to cooperate with the IG in any investigation undertaken by the IG. *Id.* at § 2-285.

The powers of the IG include the power to "issue subpoenas to request documents or testimony related to an investigation." *Id.* at § 2-286 (2013). Once the IG issues a subpoena, the person to whom the subpoena is directed may file an objection to the subpoena. At that point, the IG "shall consider the grounds for the objection and may resolve the objection through negotiation." *Id.* The IG is authorized to seek enforcement of subpoenas issued through the State's Attorney of Cook County. *Id.*

Upon conclusion of any investigation, the IG shall submit a confidential summary report to “the President, the appropriate head of any department or bureau to whose office the investigation pertains, the Chief of the Bureau of Human Resources, and . . . to the Board of Ethics.” Id. at § 2-288. If the IG has “conducted any investigation regarding the office, or an employee . . . of a separately elected official, the Inspector General also shall submit the confidential summary report to the elected official.” Id.

Here, the IG commenced an investigation of the Cook County Assessor’s Office (the “Assessor’s Office”). Specifically, the IG launched an investigation regarding how an employee in the Assessor’s Office allegedly received a homeowner’s exemption to which he was allegedly not entitled. As part of its investigation, on or about August 15, 2012, the IG sent a written request to the Assessor’s Office requesting information, including documents related to the homeowner’s exemption granted by the Assessor’s Office to the Assessor’s employee and/or his spouse. The Assessor, however, refused to provide the information and instead, directed the IG to submit a Freedom of Information Act (“FOIA”) request to the Assessor’s Office.

The IG, however, did not submit a FOIA request to the Assessor’s Office. Instead, on or about August 23, 2012, the IG served a subpoena on the Assessor’s Office for the documents relating to the homeowner’s exemption granted by the Assessor’s Office to the Assessor’s employee, as well as the employee’s personnel file relating to his employment with the Assessor’s Office.

On or about August 31, 2012, the Assessor’s Office filed a timely objection to the subpoena, in which it stated that the IG did not have the authority to issue a subpoena against a separately elected official pursuant to the IG Ordinance.

On or about June 7, 2013, the IG filed a two-count Complaint against Joseph Berrios, in his official capacity as Assessor of Cook County (the “Assessor”). Count I sought a declaratory judgment that the Assessor must comply with the subpoena issued by the IG. Count II asked the Court to find that, pursuant to the subpoena issued by the IG, the Assessor has a duty to produce all subpoenaed materials to the IG. The Assessor filed a Section 2-619 motion to dismiss the complaint arguing, amongst other things, that the IG lacked authority under the IG Ordinance to file suit to enforce the subpoena. The Court entered a briefing schedule on the Motion.

While the parties were briefing the motion to dismiss, the County amended the IG Ordinance, specifically Section 2-286, which now grants the IG authority to seek enforcement of its subpoena in the Circuit Court of Cook County. Cook County Code of Ordinances § 2-286 (2013). The IG Ordinance went into effect immediately upon adoption, on or about September 11, 2013.

On or about November 4, 2013, the IG served another subpoena on the Assessor’s Office (the “November Subpoena”), identical in all relevant respects to the subpoena served on or about August 23, 2012.

On or about November 14, 2013, the Assessor's Office sent a letter, through its attorney, to the IG again asserting its objection, namely that article VII, Sections 6(a), 6(f) and 4 (c) of the Illinois Constitution precludes the applicability of the Cook County Ethics Ordinance and the Cook County Independent Inspector General Ordinance to a separately elected official, such as the Assessor. Pl.'s Am. Compl., Ex. J.

On or about December 6, 2013, the IG filed an Amended Complaint against the Assessor seeking to enforce the November Subpoena (the "Complaint"). Count I of the Complaint seeks a Declaratory Judgment that the Assessor must comply with the November Subpoena issued by the IG and in Count II the IG seeks an order that the Assessor has a duty to produce to the IG any and all subpoenaed materials requested by the IG. As the November Subpoena is nearly identical to the earlier subpoena which prompted the Assessor's motion to dismiss, the Assessor again moves to dismiss the Amended Complaint pursuant to Section 2-619.¹

STANDARD OF REVIEW

Section 2-619 of the Code of Civil Procedure allows for disposal of issues of law or easily provided issues of fact. Williams v. Bd of Educ. of the City of Chic., 222 Ill. App. 3d 559, 562 (1st Dist. 1991). A Section 2-619 motion to dismiss admits well-pleaded facts, but conclusions of law and conclusory factual allegations not supported by allegations of specific facts are not deemed admitted. Patrick Eng'g, Inc. v. City of Naperville, 2012 IL 113148, ¶ 31. In reviewing a Section 2-619 motion to dismiss, the court must construe all documents presented in the light most favorable to the non-moving party and if no disputed issue of material fact is found, the court should grant the motion. Id. However, if it cannot be determined with reasonable certainty that a defense exists, the motion to dismiss should be denied. Saxon Mortg. Inc. v. United Fin. Mortg. Corp., 312 Ill. App. 3d 1098, 1104 (1st Dist. 2000). There are nine (9) enumerated basis for dismissal pursuant to Section 2-619. See 735 ILCS 5/2-619(a) (West 2010).

Section 2-619(a)(9), upon which the Assessor's Motion is based, permits dismissal where the claim asserted are barred by other affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9) (West 2010). In other words, the Assessor can defeat the IG's cause of action by asserting, pursuant to subdivision (a)(9) of this section, an "affirmative matter" which negates completely the IG's cause of action or refutes crucial conclusions of law or conclusions of material fact which are not supported in the Complaint by allegations of specific fact. Smith v. Waukegan Park Dist., 231 Ill. 2d 111, 121 (2008).

Once the Assessor satisfies this burden to go forward with the Motion to Dismiss, the IG must establish that the asserted defense is either "unfounded or requires the resolution of an essential element of material fact before it is proven." Kedzie & 103rd Currency Exch., Inc. v. Hodge, 156 Ill. 2d 112, 116 (1993). The IG may meet this burden by affidavit or other evidence. Id.

¹ The Assessor, however, no longer argues that the IG lacks authority under the IG ordinance to file suit to enforce the subpoena.

Lack of standing is an “affirmative matter” that is properly raised under Section 2-619(a)(9). Glisson v. City of Marion, 188 Ill. 2d 211, 220 (1999). The doctrine of standing is to preclude persons who have no interest in the controversy from bringing the suit. Id. The doctrine assures that issues are raised by those parties with a real interest in the outcome of the controversy. Id. at 221. A plaintiff need not allege facts establishing that it has standing to proceed. Wexler v. Wirtz Corp., 211 Ill. 2d 18, 22 (2004). Rather, it is the defendant’s burden to plead and prove lack of standing. Id. It is within this framework that the Court considers the Assessor’s Motion to Dismiss.

DISCUSSION

The Assessor moves to dismiss the IG’s Complaint arguing that the IG lacks standing to bring this action because it is not an independent unit of local government. Rather, asserts the Assessor, it is a department or unit of local government, and as such, it is not authorized by law or ordinance to file suit in its name, citing Jackson v. Vill. of Rosemont, 180 Ill. App. 3d 932 (1st Dist. 1988), Richardson v. Cnty. of Cook, 250 Ill. App. 3d 544 (1st Dist. 1993), Ferguson v. Patton, 2013 IL 112488, and Gray v. City of Chi., 159 F. Supp. 2d 1086 (N.D. Ill 2001).

The IG responds that it does in fact have standing to bring this action through the State’s Attorney, citing Ferguson v. Patton, 2013 IL 112488. According to the IG, Ferguson is an analogous case and in that case the Illinois Supreme Court rejected the same argument that the City of Chicago’s Inspector General lacked standing to challenge the refusal of another City department to provide subpoenaed documents, notwithstanding the fact that it has no legal status separate and apart from the City of Chicago. As for the cases cited by the Assessor, the IG asserts that all of those cases, except Ferguson, are distinguishable, as they all involve third-party suits against a village, city or county, not as in this case, a suit by one County officer against another. As both parties have cited Ferguson v. Patton, 2013 IL 112488, in support of their respective positions, the Court examines Ferguson.

In Ferguson, the Office of the Inspector General was created by a municipal ordinance. Ferguson v. Patton, 2013 IL 112488, ¶ 3. Part of the Inspector General’s duties were to investigate misconduct and waste within the programs and operations of the City of Chicago. Id. The Inspector General began investigating how a former City of Chicago employee was awarded a contract, in apparent violation of the City of Chicago’s ethics and contracting rules. Id. at ¶ 4. As part of its investigation, the Inspector General served a subpoena on the Corporation Counsel for certain documents. Id. at ¶ 8. The Corporation Counsel, however, filed an objection to the subpoena and did not comply with the subpoena. Id. at ¶ 9. The Inspector General, retained private counsel who subsequently filed a complaint against the Corporation Counsel seeking enforcement of the subpoena. Id. at ¶ 10. The Corporation Counsel moved to dismiss the complaint. Id. at ¶ 11. The trial court found that the Inspector General lacked authority to retain its own counsel to bring the litigation and that the Inspector General was not entitled to the requested materials because they were protected by the attorney client privilege. Id. at ¶ 12. As such, the trial court granted the Corporation Counsel’s motion and dismissed the case. Id. The

Inspector General appealed.

The appellate court, however, reversed and remanded the matter. Id. at ¶ 13. First, the appellate court rejected the Corporation Counsel's argument that the case did not present a justiciable matter, noting that the action was brought by the head of one municipal department against the head of another municipal department. Id. Having dispensed with the jurisdictional argument, the court addressed whether the Inspector General was entitled to hire a private attorney to sue to enforce the subpoena served on the Corporation Counsel. Id. at ¶ 14. Although the ordinances governing the Inspector General's powers did not explicitly confer on the Inspector General the authority to hire counsel to enforce subpoenas in the circuit court, the appellate court concluded that such authority was reasonably inferred from the ordinance. Id. The appellate court reasoned that permitting the Inspector General to bring an action in the circuit court to enforce a subpoena against the Corporation Counsel was necessary to enable the Inspector General to accomplish the purposes for which his office was established. Id. at ¶ 15. The Corporation Counsel appealed to the Illinois Supreme Court. Id. at ¶ 18-19.

The Illinois Supreme Court reversed the appellate court decision. Id. at ¶ 24. The supreme court began by rejecting the Corporation Counsel's argument that the dispute was nonjusticiable. Id. The court found that the case involved the construction of certain provisions of the Chicago Municipal Code regulating the respective authority of the Inspector General, the Corporation Counsel and the mayor. Id. at ¶ 26. The construction of ordinances, noted the supreme court, is a quintessential judicial power. Id. Next, the court rejected the notion that the Inspector General lacked standing to contest the Corporation Counsel's refusal to provide the subject documents. Id. at ¶ 27. After noting that standing requires a person seeking to invoke the jurisdiction of the court to have some real interest in the cause of action or a legal or equitable right, title or interest in the subject matter of the controversy, the supreme court found that the Inspector General has a real interest in the matter at issue. Id. The supreme court observed that it was the Inspector General who issued the subpoena in question pursuant to his authority under the Chicago Municipal Code. Id. Moreover, noted the court, the Inspector General's ability to seek enforcement of the subpoena in light of the Corporation Counsel's objections will have a direct and significant impact on how the Inspector General undertakes his investigatory responsibilities under the law. Id. Next, the court concluded that the Inspector General was authorized to take action in response to the Corporation Counsel's refusal to comply with its lawfully issued subpoenas. Id. at ¶ 28. Finally, the court considered whether the Inspector General's authority includes the power to unilaterally retain counsel of its own choosing to initiate enforcement proceedings in his own name. Id. at ¶ 29. This authority, concluded the court, the Inspector General did not possess. Id. The Office of the Inspector General, noted the court, is not a unit of local government, but rather, merely a department of the City of Chicago. Id. at ¶ 30. As such, it "has no legal status separate and apart from the City." Id. The supreme court found that the ordinance establishing the Inspector General's power and responsibility did not confer on the Inspector General the authority to file proceedings in circuit court to enforce any of the ordinances pertaining to his responsibilities under the Chicago Municipal Code or to retain private counsel to do so on his behalf. Id. at ¶ 31. Such authority, observed the court, belongs instead to the Corporation Counsel, pursuant to the Illinois

Municipal Code and the Chicago Municipal Code. Id. at ¶ 32.

In this case, the Assessor argues that the IG lacks standing to bring this action. The doctrine of standing is to preclude persons who have no interest in the controversy from bringing the suit. Glisson v. City of Marion, 188 Ill. 2d 211, 220 (1999). The doctrine assures that issues are raised by those parties with a real interest in the outcome of the controversy. Id. at 221. In the case at hand, like the Inspector General in Ferguson, the IG here has a real interest in the matter at issue. It was the IG who, pursuant to his authority, issued the subpoena to the Assessor. Per the ordinance, the Assessor filed an objection to the subpoena. Clearly, the IG has an interest in seeking the enforcement of a subpoena duly issued by the IG. Accordingly, the Court finds that the IG has standing to seek enforcement of his subpoena.

The Court having determined that the IG has standing to bring suit, now turns to the Assessor's remaining arguments for dismissal. The Assessor's Motion only cites Section 2-619(a)(9) as a basis for dismissal. The Assessor's remaining arguments, however, are not a basis for dismissal pursuant to Section 2-619. Meticulous motion practice dictates that motions should be properly designated. Malanowski v. Jabamoni, 293 Ill. App. 3d 720, 724 (1st Dist. 1997). However, misdesignation is not always fatal to the right of the movant to prevail. Id. The court will look to the substance of the motion to determine which section of the Code of Civil Procedure governs. Id. Here, the Assessor's remaining arguments, namely that the Ordinance is invalid, is a Section 2-615 argument. The IG responds in kind. A Section 2-615 motion is a proper way to test the constitutionality of a statute. Vill. of Schaumburg v. Doyle, 277 Ill. App. 3d 832, 842 (1st Dist. 1996). Accordingly, the Court considers the Assessor's remaining arguments under that section.

A Section 2-615 motion to dismiss is limited to attacking the legal sufficiency of the pleading. Toney v. Bower, 318 Ill. App. 3d 1194, 1198 (1st Dist. 2001). In considering such a motion, the issue before the court is "whether, when taken as true, the facts alleged in the complaint set forth a good and sufficient cause of action." Scott Wetzel Servs. v. Regard, 271 Ill. App. 3d 478, 480 (1st Dist. 1995).

The Assessor argues that the IG Ordinance unconstitutionally removes and diminishes the powers vested in the Assessor by the Illinois Constitution. The IG Ordinance, asserts the Assessor, diminishes the Assessor's power over his office by empowering the IG to investigate, require the cooperation of, and pursue criminal sanctions against the employees in the Assessor's Office as well as the Assessor himself, citing Dunne v. Cnty. of Cook, 164 Ill. App. 3d 929 (1st Dist. 1987), Pechous v. Slawko, 64 Ill. 2d 576 (1976) and Dunne v. Cnty. of Cook, 108 Ill. 2d 161 (1985).

The IG responds that Section 4(d) of the Illinois Constitution unequivocally provides the County with the power to provide duties to County officers. The IG asserts that the County's exercise of its constitutional right to provide a duty to the Assessor to cooperate with a subpoena does not constitute a change in the form of government. The IG further argues that under Illinois statutes, the power to impose additional duties upon the Assessor is limited only by the

prohibition against altering duties, powers, and functions of county officers imposed by law. The IG reasons that since imposing a duty to cooperate with the IG's investigation does not alter any duty, power, or function specifically imposed by law, to deny the County the authority to "impose" this additional duty on the Assessor would violate the Illinois Counties Code. Pl.'s Resp., p. 4. The Court agrees.

Article VII, Section 4(d) of the Illinois Constitution provides:

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

Ill. Const., Art. VII, § 4(d) (1970).

Section 5-1087 of the Illinois Counties Code provides that:

No county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance.

55 ILCS 5/5-1087 (West 2010).

The Assessor is an elected County Official whose duties include the evaluation and appraisal of real estate property in Cook County. See 35 ILCS 200/1-10 (West 2010); 35 ILCS 200/9-75 (West 2010); and Cook County Assessor's Office, <http://www.cookcountyassessor.com/about.aspx> (last visited Jan. 8, 2014). Under the plain language of Section 4(d) of the Illinois Constitution, a county officer shall have the duties, powers and functions provided by law and those provided by county ordinance. There is nothing in Section 4(d) that prohibits or restricts a county from adding additional duties and functions to a county officer. The IG Ordinance at issue in this case does just that. The IG Ordinance requires the Assessor, like every other county officer to cooperate with and comply with the IG. There is nothing in the IG Ordinance that takes away any power of the Assessor nor does the IG Ordinance diminish the duties of the Assessor's Office. The Court finds the cases cited by the Assessor distinguishable, as in those cases the ordinances generally involved the incursion by one branch of government, typically the legislative branch, into the power of the chief executive, which were found to constitute a change in the form of government, in the absence of referendum approval.

In Dunne, Cook County commissioners passed a resolution which gave the commissioners the right to hire and fire members of their personnel staff. Dunne, 164 Ill. App.

3d at 931. A statute, however, gave the Cook County board president power to appoint all officers and employees of Cook County except those whose election or appointment was otherwise provided for by law. Id. The plaintiff, the President of the Cook County board, filed suit seeking a declaratory judgment that the resolutions were unconstitutional. Id. at 931-32. The trial court found that the power to hire and fire the employees in question is vested in the executive officer of Cook County and that the resolutions were unconstitutional because they attempt to alter the form of county government, without referendum approval, in violation of Article VII, Section 6(f) of the Illinois Constitution. Id. at 932. The appellate court affirmed. Id. at 937. The court found that the defendants improperly attempted to take power given by statute to the chief executive and improperly transfer it to the legislative body of government. Id. at 933. The appellate court found that because the relative powers of the county board and the chief executive were affected, a change in the form of government had taken place. Id. at 934.

The next case cited by the Assessor, Pechous v. Slawkso, 64 Ill. 2d 576 (1976), is also distinguishable. In Pechous, the defendant, the Aldermen of Berwyn, enacted an ordinance removing from office the superintendent of streets, the commissioner of public works, the city collector, and the city attorney and appointing replacements for them. Id. at 580. State statute and the municipal code of Berwyn, however, provided for the appointment of those officials by the mayor with the approval of the council. Id. Removal of those appointees was in the discretion of the mayor. Id. The mayor filed suit challenging the power of the Aldermen to exercise powers of appointment and removal. Id. The supreme court invalidated the ordinance, finding that it encroached upon the mayor's statutory authority. Id. at 588.

Similarly, the Court finds Dunne v. Cnty. of Cook, 108 Ill. 2d 161 (1985), inapplicable. In Dunne, the Cook County board president filed suit seeking a declaratory judgment that an ordinance approved by the County board of commissioners, which reduced the percentage of votes required to override the president's veto, was invalid. Id. at 162-63. The supreme court held that the ordinance altered the county's form of government without referendum in violation of Article VII, Section 6(f) of the Illinois Constitution. Id. at 167. The court found that reducing the vote necessary to override the president's veto from four-fifths to three-fifths affected a diminution of the power of the board president and an augmentation of the power of the board. Id. at 166. As such, concluded the court, the ordinance, absent approval by referendum, altered the form of government and was therefore invalid. Id. at 167.

The Assessor next argues that the County lacks the authority to interfere with or impose restrictions upon the Assessor, an independently elected executive officer established under Article VII, Section 4(c) of the Illinois Constitution, citing Heller v. Cnty. Board of Jackson Cnty., 71 Ill. App. 3d 31 (5th Dist. 1979). The Assessor notes that under Article VII, Section 6(a) of the Illinois Constitution, a home rule unit such as the County of Cook, "may exercise any power and perform any function pertaining to its government affairs." Ill. Const., Art. VII, § 6(a) (1970). The assessment of real estate, according to the Assessor, does not pertain to the County's local government and affairs within the contemplation of Article VII, Section 6(a), citing Chi. Bar Ass'n v. Cnty. of Cook, 102 Ill.2d 438 (1984). Moreover, contends the Assessor, any wrongdoing in obtaining a homestead exemption may be investigated by the Assessor or any

duly empowered and statutorily empowered law enforcement agency.

The IG counters that this case has nothing to do with home rule powers as counties have the constitutional authority to impose additional duties on county officers, whether the counties are home rule counties or not.

Article VII, Section 6(a) of the 1970 Illinois Constitution provides, in relevant part:

Except as limited by this Section, a home rule unit 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 health, safety, morals and welfare; to license; to tax; and to incur debt.

Ill. Const., Art. VII, § 6(a) (1970).

Article VII, Section 6(f) of the Illinois Constitution states:

A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

Ill. Const., Art. VII, § 6(f) (1970).

As a preliminary matter, the Court notes that it is undisputed that the County is a home rule unit. Evanston v. Cnty. of Cook, 53 Ill. 2d 312, 314 (1972). The issue before the Court is whether the IG Ordinance involves a power or function pertaining to the affairs of Cook County within the meaning of Article VII, Section 6(a). An ordinance pertains to the government and affairs of a home rule unit where the ordinance addresses problems that are local in nature rather than state or national. Schillerstrom Homes, Inc. v. City of Naperville, 198 Ill. 2d 281, 290 (2001). “Cook County has an interest in the efficient operation of any and all of the offices that it funds.” Loop Mortg. Corp. v. Cnty. of Cook, 291 Ill. App. 3d 442, 447 (1st Dist. 1997). “The county board is the manager of county funds and business and is ultimately responsible to the public for the total operation of county government.” Id. The County Board passed an ordinance establishing the Office of the Independent Inspector General, whose purpose is to “detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government.” Cook County Code of

Ordinances § 2-283 (2007). The duties of the IG include investigating “corruption, fraud, waste, mismanagement, unlawful political discrimination and misconduct in operations of County Government under the Offices of the President as well as the separately elected County officials . . .” Id. at § 2-284. The Court cannot say that investigating fraud or waste in Cook County government is beyond the scope of the home rule power granted to the County. Nevertheless, even if the IG Ordinance did not constitute a valid exercise of the home rule power, the Court finds that the County still had the authority to impose additional duties on County officers, including the Assessor. See Ill. Const., Art. VII, § 4(d) (1970) and 55 ILCS 5/5-1087 (West 2010).

Lastly, the Assessor argues that the County cannot perform the duties of the Assessor, nor direct or interfere with the operation, control, and management of the Assessor’s Office, because the General Assembly intended that the Assessor operate free from the interference of the County in performing his function of assessing property, citing Heller, 71 Ill. App. 3d at 31.

In Heller, the Jackson County Board appointed plaintiff, supervisor of assessments. Heller, 71 Ill. App. 3d at 34. The county board became dissatisfied with plaintiff’s performance and subsequently reorganized the office of supervisor of assessments, which resulted in the re-classification of plaintiff’s position and duties. Id. at 35. In addition, plaintiff’s salary was reduced. Id. Plaintiff brought suit against the county alleging that the county board interfered in the operation of his office. Id. at 34. Following trial, the trial court ruled in favor of plaintiff and the county appealed. Id. The appellate court affirmed, holding that the county board could not hire employees in the office of the supervisor of assessments, nor could it adopt organizational charts and job classifications which divest the supervisor of assessments of his statutory responsibilities for control of board operations. Id. at 41.

The Court finds Heller distinguishable from the case at bar. In Heller, the actions of the Jackson County board divested the plaintiff of his fixed statutory duties and created a job description for the supervisor of assessments contrary to that fixed by statute. In addition, the Jackson County board reduced the salary of the supervisor of assessments. Here, the County, through the IG Ordinance, has required the Assessor, along with every other County employee, to comply with the IG. The IG Ordinance does not give the IG those powers that rightfully belong to the Assessor. Nor does the IG Ordinance re-classify or change the duties of the Assessor. In short, the IG Ordinance in this case is not remotely similar in form or substance to the ordinance involved in Heller.

CONCLUSION

For the above stated reasons, Defendant, Joseph Berrios, in his official capacity as Assessor of Cook County’s Motion to Dismiss Plaintiff, Patrick M. Blanchard, Independent Inspector General of Cook County’s Complaint is denied.

ENTERED. **ENTERED**
Assoc. Judge Franklin Ulysses Valderrama-1968
JAN 15 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Franklin U. Valderrama, Judge Presiding

DATED: January 15, 2014