

Memo

From: Carl Larson

To: The Stephenson County Board

Date: 11-26-19

Re: Nursing Home Options

I have been asked to offer an opinion as to whether Walnut Acres could be sold or closed and if so, whether a referendum or a vote of the County Board would be the appropriate mechanism? This memorandum outlines why I believe an affirmative vote of 15 members of the County Board would be required to sell or close Walnut Acres.

According to 55 ILCS 5/5-21001(9):

Upon the vote of a 2/3 majority of all the members of the board, to sell dispose of or lease¹ for any term, any part of the home properties in such manner and upon such terms as it deems best for the interest of the county, and to make and execute all necessary conveyances thereof in the same manner as other conveyances of real estate may be made by a county. However, if the home was erected after referendum approval by the voters of the county, it shall not be sold or disposed of except after referendum approval thereof by a majority of the voters of the county voting thereon.

(Appendix A)

Therefore, to answer the question of whether the sale or closure of Walnut Acres requires a 2/3 vote of the total County Board or a referendum depends upon which mechanism was used to establish it. In "The History of Stephenson County" it indicates, "With public approval the county board early in the home's second century in 1961, converted [the Stephenson County

¹ I do not believe that Stephenson County could lawfully lease the Stephenson County Nursing Home. See 55 ILCS 5/5-21005 which states that a nursing home, "shall not be let or rented to any individual, association, or corporation except that a county of more than 150,000 but less than 500,000 population may lease such home to any township in the county having more than 125,000 population."

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Poor Home] into a state-approved nursing home, renaming it the Benjamin Stephenson Nursing Home. . ." (See Appendix B). A review of the records of Walnut Acres establishes that the process of taking the Stephenson County Home and turning it into a state licensed nursing home was done by vote of the Stephenson County Board of Supervisors. On March 11, 1960 employees of the Stephenson County Home wrote various state licensing officials a letter with the following language, "The enclosed article will confirm the fact that the Stephenson County Board of Supervisors voted to convert our County Home to a licensed Nursing Home. This will be done as soon as finances are arranged for costs and as soon as practicable." (See Appendix C). The conversion was completed in 1961. The following quote appeared in the September 22, 1961 edition of the Journal Standard, "[T]he Benjamin Stephenson Nursing Home holds its first open house from 2 to 5 o'clock. It's the successor to the Stephenson County Home. The change of name signals a complete change in operation carried through by the County Board of Supervisors." *Journal Standard September 22 (Wednesday), 1961.* (Appendix D)

There is no mention of a referendum concerning the creation of a nursing home in the Freeport Journal Standard on the dates following the November 8, 1960 election or the April 4, 1961 election, although the newspaper published extensive coverage of the election results.

Additionally, the law as it existed in 1961 did not mention the possibility of creating a nursing home by referendum. Today the relevant statute is 55 ILCS 5/5-21001, which I was able to trace back to 1988 when it was listed as Ill.Rev.Stat 1988 ch. 34, par. 5362. As of 1988 the relevant language was materially similar to the current statute. I was unable to locate statutes between 1988 and 1961, however in 1961 the statute merely stated, "Any county is authorized to purchase or construct, equip, operate and maintain one or more homes for the aged." Ill.Rev.Stat 1961 ch. 34 par. 5361. (Appendix E). There is no mention therein of the requirement or even possibility of a referendum.

The 1961 State licensing is the appropriate event to consider when determining the method of establishment of the Stephenson County Nursing Home. First, a review of the relevant records show that the Stephenson County Home had to comply with a number of requirements in 1961 in order to become a State licensed nursing home. Accordingly, before that license the County Home did not meet the State's definition of a nursing home. The statute being analyzed is a State regulation and it makes sense to apply the State's definition when considering the State's regulation. Also, as a part of the process of becoming licensed, the County Home was required to hire registered nurses. It seems unlikely that the Stephenson County Home was a nursing home without registered nurses. Next, before 1961 the entity was known as the Stephenson County Home but after the 1961 licensing it became the Benjamin Stephenson Nursing Home. Not to overthink the issue, prior to 1961 the entity was not called a nursing home and after 1961 it was. Third, even if 1961 was not the correct date to focus on,

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the absence of reference to the use of a referendum to create a nursing home in the 1961 statute makes it very unlikely that a referendum was used to establish a nursing home before that date.

As a result, it appears that the Benjamin Stephenson County Nursing Home (now Walnut Acres) was established as a Nursing Home by a vote of the County Board of Supervisors and accordingly that a decision could be made in terms of its sale or disposition with a 2/3s vote of the total County Board (15 regardless of attendance).

Respectfully,



Carl Larson