



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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OFFICERS:

Employment of Deputies
in the Office of Circuit
Clerk

Honorable Dennis P. Ryan
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60085

Dear Mr. Ryan:

I have your letter wherein you ask certain questions regarding the bail bond trust fund maintained by the Lake County circuit court clerk. You advise that the Chief Judge of the circuit has issued an administrative order finding that the clerk of the circuit court has insufficient employees to provide notices in accordance with section 110-17 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 110-17), to individuals who have not claimed bail bond deposits, and directing the clerk to employ, on a temporary basis,

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two employees to prepare and mail notices. The Chief Judge has further ordered that reasonable compensation for said employees be paid out of the earnings of the clerk's office. It appears from your letter that the order embodies and is based upon the determination of the majority of the judges of the circuit that the increased number is necessary to maintain the records properly. You inquire whether there is legal authority for the issuance of such an order. For the reasons hereinafter stated, it is my opinion that a chief judge of a judicial circuit has no authority, even with the concurrence of a majority of the judges of the court, to order the clerk of the circuit court to employ additional deputies to send the notices required by section 110-17 of the Code of Criminal Procedure. Even if he had the authority to appoint such deputies, they could not be compensated out of the earnings of the clerk's office.

I find no statutory basis for such authority. While it might be argued that sections 15 and 22 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1979, ch. 25, pars. 15, 22) provide such authority, they are insufficient. Section 15 provides as follows:

"Any clerk who fails to enter of record any order or judgment of his court within 45 days after the same is made or rendered, or any clerk having the duty to forward to the Department of Public Health the record of any judgment of divorce or annulment of marriage, who wilfully fails to do so within 45 days after the close of

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the month in which the same is made or rendered, shall be guilty of a petty offense and shall be fined by the court not exceeding \$100, and for any subsequent offense he may be fined in a like amount or proceeded against as for a Class A misdemeanor in office and removed from his office. Provided, however, that in any county of less than 500,000 inhabitants, when it appears to the majority of judges of such court that there are an insufficient number of persons employed in the office of the clerk of the court to properly make the entries in accordance with this Section, such majority of judges of such court shall thereupon determine and fix the number of deputies they find necessary to so properly maintain the records, and their reasonable compensation shall be paid out of the earnings of the office." (Emphasis added.)

The above language authorizes the court to order the temporary employment of deputy clerks only to make entries and to forward the record of any judgment of divorce or annulment. It says nothing about the notices required by section 110-17 of the Code of Criminal Procedure of 1963.

Section 22 provides as follows:

"The judges of the several courts shall, as often as once in each year, make an examination of the offices of the clerks of their respective courts, and may give such directions and make such orders in regard to the keeping of the same, and the records and papers thereof, not contrary to law, as they shall deem best."

While this section grants authority to circuit court judges to make orders in regard to the keeping of the office records and papers of the clerk's office, I do not think this section authorizes a judge to order the hiring of additional personnel. The work

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of the circuit clerk is accomplished through the clerk and his deputies. Circuit clerks, when necessary, appoint deputies (Ill. Rev. Stat. 1979, ch. 25, par. 9) and are responsible for their acts. (Ill. Rev. Stat. 1979, ch. 25, par. 10.) The county board provides compensation for the clerk and his deputies. (Ill. Rev. Stat. 1979, ch. 25, par. 27.3.) A judge's ordering of additional deputies and providing for their compensation would be contrary to law.

It also might be argued that the court has inherent authority to issue the order. "Courts have inherent powers to protect themselves and the public they serve against default of their constitutional obligations. These powers are to enable them to perform their judicial functions with efficiency, independence and dignity". (People ex rel. Bier v. Scholz (1979), 77 Ill. 2d 12, 19.) However, inherent powers relate only to the judicial functions. The sending of notices required by section 110-17 of the Code of Criminal Procedure is not a judicial function. The failure to send the notices, while reprehensible, does not interfere with any court proceeding.

Even if the ordering of the hiring of additional deputies were valid, the specified manner of payment would not be. Section 18 of article VI provides that "the salaries of clerks and other non-judicial offices shall be as provided by law". As discussed above, the county board provides an appropriation for salaries of the deputy clerks. Section 14 of

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article IV of the Constitution provides that "there shall be no fee officers in the judicial system". Salaries thus cannot be based on fees collected or made to depend on the collection of any fee. Furthermore, section 2 of "AN ACT to provide for the timely deposit of fees, etc." (Ill. Rev. Stat. 1979, ch. 85, par. 722) requires fees collected by the clerk of the circuit court, with limited exceptions, to be deposited with the county treasurer.

Thus that portion of section 15 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1979, ch. 25, par. 15) which directs that compensation of employees be paid out of the earnings of the office, has been abrogated. Statutory provisions are void if they are in conflict with the Constitution (Modern Dairy Co. v. Department of Revenue (1952), 413 Ill. 55, 66; People v. Schaeffer (1924), 310 Ill. 574, 584), and where two statutes are irreconcilable, the one which was more recently adopted will abrogate the earlier to the extent that they are inconsistent. (Johnson v. State Electoral Board (1972), 53 Ill. 2d 256, 259; Grenier & Co. v. Stevenson (1969), 42 Ill. 2d 289, 294.) The second sentence of section 15 was added in 1959 (Laws of 1959, p. 714), prior to the Constitution of 1970 and the enactment of "AN ACT to provide for the timely deposit of fees, etc.". Therefore, that language must be con-

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sidered void insofar as it authorizes compensation of deputies out of the earnings of the circuit clerk's office.

You also inquired as to whether the circuit clerk must deposit interest he has earned on invested bail bond funds with the county treasurer. I agree with your opinion that he must. I previously advised in opinion No. NP-744, issued April 17, 1974, that the circuit court clerk has authority to invest bail deposits or bond money pursuant to "AN ACT relating to certain investments of public funds by public agencies" (Ill. Rev. Stat. 1979, ch. 85, pars. 901 et seq.) and that any earnings accruing from such investment must be paid over to the county treasurer. I still maintain that opinion.

Finally, you also ask whether the county board has authority to employ accountants to audit the bail bond trust fund in the custody of the clerk of the circuit court. For the reasons hereinafter stated, it is my opinion that a county board has such authority.

Sections 25.02 and 25.03 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, pars. 403, 404), authorize a county board to "manage the county funds and county business, except as otherwise specifically provided" and to "examine and settle all accounts against the county, and all accounts concerning the receipts and expendi-

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tures of the county, and to establish procedures therefor".

Under the Illinois Constitution of 1970, the office of the circuit court clerk was created by article VI (The Judiciary), rather than by article VII (Local Government). For some purposes the circuit clerk is considered a non-judicial officer of the judicial branch of State government. (See, 1973 Ill. Att'y Gen. Op. 171.) However, for others the office of the circuit court clerk is still treated as a county office. Section 27.3 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1979, ch. 25, par. 27.3) requires the county board to provide the compensation of clerks of the circuit court, and the amount necessary for clerk hire, stationery, fuel and other expenses. Section 2 of "AN ACT to provide for the timely deposit of fees, etc." (Ill. Rev. Stat. 1979, ch. 85, par. 722), which I cited earlier, requires the clerk of the circuit court to deposit all fees collected with the county treasurer, with certain limited exceptions. Since October 1, 1977, unclaimed bail bond money must be deposited in the county treasury pursuant to the provisions of section 110-17 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 110-17). Furthermore, as I have advised, interest should be turned over to the county treasurer.

As stated by the court in Donlevy v. Sims (1912),

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175 Ill. App. 290, 296, with regard to a similar question concerning the State's Attorney: "It necessarily follows that county boards must have authority to investigate his office to learn whether he has received all he ought to collect and had paid over all that he is required to account for".

Very truly yours,

A T T O R N E Y G E N E R A L