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S-763

COUNTIES:
Bond Forfeiture

Honorable Gerry L. Dondanville
State's Attorney
Kane County
Courthouse
Geneva, Illinois

Dear Mr. Dondanville:

I have your letter wherein you state:

"Chapter 38, Sections 110-7 and 110-8 deal with the procedure to be followed in the forfeiture of bonds given in criminal and traffic cases. Supreme Court Rule 556 (c) also deals with the particular topic.

However, there is no indication in the statute or the rule as to how the funds are to be handled by the County Treasurer, in the event that the monies are to be turned over to the county. My research in Chapter 36 dealing with County Treasurers leads me to the belief that these funds would be classified as Class C monies under Section 21 and would belong to the county in its corporate

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capacity. If they are Class C funds then Section 24 of the Treasurers Act would govern their distribution.

For a number of years under former administrations the County Treasurer has simply been retaining forfeited monies and they have not been made available for use by the county. The County Treasurer is reluctant to disburse any of these funds without knowing the procedure which should be followed.

I respectfully request your interpretation on this particular matter. In essence, the County Treasurer would like to know what he should do and what he can do with respect to the funds received as a result of bond forfeitures."

Sub-paragraph (a) of section 110-7 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch. 38, par. 110-7) provides:

"(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than \$25."

Sub-paragraph (g) of the same section states as follows:

"(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith to the accused at his last known address. If the

accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State if the charge for which the bond was given was a felony or misdemeanor, or if the charge was quasi-criminal or traffic, judgment for the political subdivision of the State which prosecuted the case, against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action."

Sub-paragraph (a) of section 110-8 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch 38, par. 110-8) provides:

"(a) In lieu of the bail deposit provided for in Section 110-7 of this Code any person for whom bail has been set may execute the bail bond with or without sureties which bond may be secured:

(1) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash,

or stocks and bonds in which trustees are authorized to invest trust funds under the laws of this State; or

(2) By real estate situated in this State with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail set in the bond."

Sub-paragraph (g) and (h) state as follows:

"(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused and his sureties for the amount of the bail and costs of the proceedings.

(h) When judgment is entered in favor of the State on any bail bond given for a felony or misdemeanor, or judgment for a political subdivision of the State on any bail bond given for a quasi-criminal or traffic offense, the State's Attorney or political subdivision's attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the cash, stocks or bonds deposited with the clerk of the court and the real estate described in the bail bond schedule. The cash shall be

used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The stocks, bonds and real estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions."

You have asked me what the county treasurer can and should do with respect to the funds received as a result of bond forfeitures.

It should be noted that under the provisions of sub-paragraph (g) of section 110-7 of the Code of Criminal Procedure of 1963. supra, that when a bail bond is forfeited the court is to enter judgment for the State if the charge

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for which the bond was given was a felony or a misdemeanor. The context in which the term "State" is used herein means, I believe, State for the use of the county. In other words, the money paid to satisfy the bond forfeiture should be paid into the county treasury. Such a result would be consistent with the fact that the statute clearly states that after payment of costs, the 10% deposit required by sub-paragraph (a) is required to be paid to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The deposit was merely a part of the whole amount of the bail. Furthermore, sub-paragraph (h) of section 110-8 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch. 38, par. 110-8) clearly states that upon forfeiture of a bail bond the proceeds of the securities should be paid into the county treasury if the offense was a violation of any penal statute of this State. It is a rule of statutory construction that a statute should be construed as a whole or in its entirety and the legislative intent gathered from the entire statute rather than from any one part thereof. Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456; People ex rel. Nelson v. Olympic Hotel Bldg. Corp., 405 Ill. 440.

We have thus determined that if there is a bond forfeiture and the offense was a violation of a penal statute of this State, then the judgment on the forfeiture is in favor of the county. The proceeds of securities sold to satisfy the judgment are to be paid into the treasury of the county in this instance. Your principal question is how these funds should be classified and also what the county treasurer can and should do with them. It can be observed that the statutes direct that the proceeds are to be paid into the county treasury. It has been held that statutes should be read according to the natural import of language, without resort to subtle or forced constructions. (People v. Shader, 326 Ill. 145; Weill v. Centralia Service & Oil Co., 320 Ill. App. 397.) Necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain legislative intent. (U.S. v. Jones, 204 F. 2d 745.) Following these rules I am of the opinion that money which is payable to the county or to the county treasury would belong to the county in its corporate capacity. Consequently such money on deposit in a bank or depository would be classified Class C pursuant

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to section 5 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants * * * * (Ill. Rev. Stat. 1973, ch. 36, par. 21.) The withdrawals of these funds would then be governed by the provisions of section 8 of the said Act (Ill. Rev. Stat. 1973, ch. 36, par. 24) which provide:

"When county moneys have been deposited in any such depository they shall be withdrawn therefrom only in the following manner: * * * 'Class C' funds shall be withdrawn only upon checks or drafts signed by the county treasurer and supported by warrants signed by the County Clerk and countersigned by the president or chairman of the county board; * * * Provided, however, that subject to the limitations hereinafter set forth in Section 11, the County Treasurer shall have the power to withdraw such county moneys from any depository in the cases provided for and under the circumstances stated in Sections 9 and 10 of this act, and, provided further, that the provisions of this Act regarding the proper payees of checks or drafts shall not be construed to obligate any depository to investigate or determine the right of any payee to receive payment or any check or draft of the County Treasurer."

Very truly yours,

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