



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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COUNTIES:
Control Over Expenditure of
Fees to Finance Court System

The Honorable Michael L. Wepsiec
State's Attorney, Jackson County
Jackson County Courthouse
Murphysboro, Illinois 62966

Dear Mr. Wepsiec:

I have your letter wherein you inquire whether the circuit court may direct the expenditure of the fees collected pursuant to section 5-1101 of the Counties Code (55 ILCS 5/5-1101 (West 1996)). For the reasons hereinafter stated, it is my opinion that these fees are, in general, required to be paid into the county general fund, and the proceeds thereof are subject to appropriation by the county board for purposes relating to operation of the court system; the circuit court has no authority to direct or restrict the expenditure of such funds.

Section 5-1101 of the Counties Code permits a county board to impose by ordinance or resolution an additional fee to

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be collected in criminal and traffic cases. Subsection 5-1101(e) of the Code provides:

(e) The proceeds of all fees enacted under this Section shall, except as provided in subsection (d), be placed in the county general fund and used to finance the court system in the county, unless the fee is subject to disbursement by the circuit clerk as provided under Section 27.5 of the Clerks of Courts Act."

With respect to the exceptions referred to in subsection 5-1101(e), subsection 5-1101(d) requires that fees imposed for second and subsequent violations of DUI statutes or ordinances be placed in the county general fund to be used to finance educational programs related to DUI, and section 27.5 of the Clerks of Courts Act (705 ILCS 105/27.5 (West 1996)) provides that all fines and fees totaling less than \$55 which relate to certain traffic law violations are to be disbursed pursuant to a stated formula. Neither of these provisions is in issue here.

Section 5-1101 clearly provides that, subject to the stated exceptions, the proceeds of the fees collected thereunder are to be placed in the county general fund to be used to finance the court system. All money in the county general fund is subject to appropriation by the county board in its annual budget ordinance. (55 ILCS 5/6-1001 et seq. (West 1996).) Nothing in section 5-1101 suggests that these expenditures are to be approved by the circuit court. Moreover, pertinent case law indicates that the manner in which the county board elects to

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finance the court system is within its sole discretion, and is not subject to the control of the courts so long as the facilities and salaries provided meet fundamental requirements.

It has been held, for example, that the county's duty to erect or otherwise provide a courthouse and jail is mandatory, but that the county board, and not the court, has discretion as to the kind, cost, size and other conditions of the buildings. (Mercer County v. Wolff (1909), 237 Ill. 74, 77.) Similarly, although the county board can be compelled by mandamus to repair the courthouse, it retains the discretion as to the method of repair. (Gramer v. Board of Supervisors of Gallatin County (1920), 294 Ill. 579, 584.) Further, the county board has the express power to set salaries of probation officers and certain other personnel, and unless the salaries set are so unreasonable as to interfere with the operation of the court, the court cannot properly enter an order to increase them. People ex rel. Bier v. Scholz (1979), 77 Ill. 2d 12, 18.

A significant portion of the cost of operating the court system is borne by the county. In addition to the provision of a courthouse, jail, rooms and furnishings for the circuit court and clerks of the court (55 ILCS 5/5-1106 (West 1996)), the county is also responsible for providing office equipment, expenses and compensation for the circuit clerk (705 ILCS 105/20, 27.3 (West 1996)); the salary and expenses of probation officers and juvenile court services officers (730 ILCS 110/14 (West

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1996)); the compensation and expenses of jury commissioners and their clerk and assistants (705 ILCS 310/6 (West 1996)) and the compensation of jurors (55 ILCS 5/4-11001 (West 1996)). The county sheriff, whose services are funded by the county, attends the court as bailiff and provides court security (55 ILCS 5/3-6023 (West 1996)) and is the custodian of the courthouse and the jail (55 ILCS 5/3-6017 (West 1996)). The county board may also provide for a county law library, available to all attorneys and judges in the county. (55 ILCS 5/5-39001 (West 1996).)

Subject only to the fundamental requirements of the judiciary, therefore, it is the county board, and not the court, which determines the level and manner of funding of the numerous items for which the county is made responsible. Consequently, delegating to the county board, rather than to the court, the authority to determine the use of the additional fees provided for in section 5-1101 is consistent with this obligation.

Moreover, this conclusion is supported by comparing the language of subsection 5-1101(e), which directs that the proceeds of the fees be placed in the county general fund for use in financing the court system, with the language of other fee provisions, which grant control of the proceeds to judicial officers. For example, subsection 27.1(u)(3) of the Clerks of Court Act (705 ILCS 105/27.1(u)(3) (West 1996)) (and parallel provisions in the following three sections) provides for imposition of a child support collection fee, to be maintained in a

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separate fund of which the clerk is custodian, to further maintenance and child support collection efforts. Section 27.3a of the Clerks of Court Act (705 ILCS 105/27.3a (West 1996)) authorizes the county board to establish a fee for automated record keeping. These fees are remitted to the county treasurer, to be held in a special fund, subject to appropriation by the county board for enumerated purposes, "provided that the expenditure is approved by the clerk and by the chief judge of the circuit court or his designee". Section 27.3c of the Clerks of Court Act (705 ILCS 105/27.3c (West 1996)) permits the county board to establish a document storage system fee, the proceeds of which are also to be remitted to the county treasurer to be held in a special fund, to be expended by the board for stated purposes, "provided that the expenditure is approved by the clerk of the circuit court".

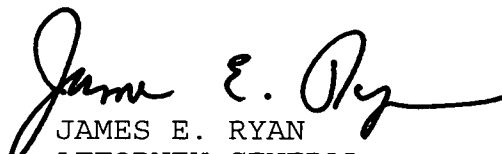
The General Assembly has, therefore, in certain instances, expressly permitted the circuit clerk or the chief judge, or both, to exercise control over the expenditure of fees collected by the circuit clerk. The General Assembly has also directed that the proceeds of such fees be placed in special funds to be used for specific purposes. In section 5-1101 it has done neither. To the contrary, it has provided clearly and unambiguously that the proceeds of the additional fee are to be deposited in the county general fund to be used to finance the court system. The county board has exclusive control of the county general fund, and it is from this fund that the county

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board is responsible for providing a courthouse, jail, rooms for the court and clerks, furnishings, equipment, salaries for various personnel connected with the court, the jury commission and other court related expenditures. It cannot be assumed by implication that it was the intent of the General Assembly to subject the expenditure of the fees in question to approval by the circuit court; when the General Assembly has intended to grant oversight to the judiciary, it has done so expressly.

It is my opinion, therefore, that the county board has exclusive control over the expenditure of funds generated from the fees authorized by section 5-1101 of the Counties Code. The county board is limited, of course, to expending the funds for the purposes specified therein, but it may exercise its discretion as to the amounts to be applied to specific expenditures without securing the approval of the circuit court.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL