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COUNTIES:
County Board
Auditing of Claims

Honorable John J. Bowman
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Dear Mr. Bowman:

I have your letter wherein you state:

"Our County is in the process of revising its accounting procedures. Our County has a duly elected County Auditor under the provisions of Chapter 34, Section 1501 et sequitur. We have received and carefully read your opinions S-569, March 28, 1973, S-562, March 28, 1973 and March 9, 1916. (We attach a copy of the March 9, 1916 opinion.)

We are having difficulty with delimiting the definition of 'claims against the County' and 'all bills presented', within the meaning of Chapter 34, Section 1504 (a), and the

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duty and power of the County Auditor and County Board in relation thereto. Our County Auditor is of the opinion that any request for payment of money must be audited by him and he must recommend payment or rejection of same. We would appreciate your opinion with regard to the following questions.

A. Does a 'claim against the County' include any submission by a person wherein that person, for a service, or a good furnished, desires to be paid in legal tender?

B. Does a claim against the County include the pay of an employee of the County Board who has earned their salary, about which there is no dispute?

C. Does a claim against the County include the pay of an employee or deputy of a County officer, about which there is no dispute?

D. Is the auditor to audit and recommend payment or rejection of only claims which are 'disputed', or shall he audit all requests for payments of any kind?

E. What does the word 'audit' mean?

F. Does audit mean to check and see if there has been an appropriation and whether the funds are available?

G. Does audit imply any 'qualitative' or discretionary activity as distinguished from a ministerial act?

H. Does audit mean the 'recommendation of payment' or rejection of a matter submitted?

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I. Does the meaning of the phrase 'all bills submitted', include more requests for payment than 'claims against the County of whatever kind and character.'

J. Does the phrase 'all bills submitted' refer only to bills in connection with a claim against the County?

K. Does each 'claim' or 'bill submitted' have to be sworn to as set forth in Chapter 34, Section 605?

L. If a matter is submitted to the County Auditor to audit, and for some reason there is a delay in his recommendation, can the County Board pay the matter without the County Auditor's recommendation?

M. Can the County Board, by resolution, impose a limit on the time given the Auditor to 'recommend' and if said recommendation is not forthcoming within said time limit, consider the item approved?

The answers to these questions are very important to the updating of our County procedures."

Section 3 of "AN ACT to create the office of county auditor in certain counties, to provide for the appointment of county auditors in counties of less than 75,000 inhabitants, and to define the duties thereof" (Ill. Rev. Stat. 1973, ch. 34, par. 1504) reads as follows:

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"The duties of the county auditor shall be to:

(a) Audit all claims against the county of whatsoever character, and recommend to the county board the payment or rejection of all bills presented.

(b) Collect and preserve statistical information with respect to cost of maintenance of the various institutions of the counties to which this act applies, such as county farms, county jails, workhouses and court houses, or any other institution maintained at county expense.

(c) Approve all orders for supplies issued by the various county officers, before the orders are to be placed with the parties to whom the same are to be given.

(d) Keep a record of all contracts entered into by the county board and all authorized county officers, for or on behalf of the county.

(e) Report quarterly to the county board the entire financial operations of the county including all fees and emoluments due the county from the various county officers as earned, collected or received under performance to their duties, revenues estimated and received, expenditures estimated and received, obligations unpaid, the condition of all funds and appropriations and other pertinent information.

Whenever so directed by the county board, the county auditor shall, also:

(f) Be the general financial accountant of the county and keep its general accounts.

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(g) Audit the receipts of the various county officers presented for deposit with the county treasurer.

(h) Devise and install a system of financial records in the offices and divisions of the county, suitable to the needs of the office and in accordance with generally accepted principles of accounting for governmental bodies, which system shall be followed in such offices.

(i) Maintain a continuous internal audit of the transactions and financial records of the officers, agents or divisions of the county."

County boards have the power "to manage the county funds and county business, except as otherwise specifically provided", (Ill. Rev. Stat. 1973, ch. 34, par. 403) and "to examine and settle all accounts against the county and all accounts concerning the receipts and expenditures of the county, and to establish procedures therefor." (Ill. Rev. Stat. 1973, ch. 34, par. 404.) Also, unless otherwise provided by law, only the county board has the authority to order the disbursement of funds from the county treasury. Ill. Rev. Stat. 1973, ch. 36, par. 9.

The final power with reference to the payment or non-payment of claims against the county rests with the

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county board. The duties of the county auditor as delineated by said section 3 are basically ministerial, although he does have the discretionary power to recommend payment or non-payment of claims.

I am of the opinion that the legislative object and purpose of paragraph (a) of said section 3 is to authorize the county auditor to advise and assist the county board in the execution of its statutory duty to manage the county funds and county business and to examine and settle all accounts against the county. The county auditor is empowered "to audit all claims against the county of whatsoever character". Thus, all requests for payment made by the county board that will necessitate an order by the board authorizing the disbursement of funds from the county treasury must be submitted to the county auditor for auditing. Based upon the results of his audit, the county auditor is empowered to recommend to the county board the payment or rejection of claims that are made.

In your letter you make reference to my opinion S-569, dated March 28, 1973, which was addressed to you. That opinion involved a construction of three Acts passed by the

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77th General Assembly. House Bill 1508 (Public Act 77-1726) amended and added certain sections to "AN ACT to revise the law in relation to county clerks". (Ill. Rev. Stat. 1973, ch. 35, pars. 1 et seq.) House Bill 1510 (Public Act 77-1727) amended and added certain sections of "AN ACT to revise the law in relation to recorders". (Ill. Rev. Stat. 1973, ch. 115, pars. 1 et seq.) House Bill 1512 (Public Act 77-1728) amended and added certain sections to "AN ACT to revise the law in relation to county treasurer". (Ill. Rev. Stat. 1973, ch. 36, pars. 1 et seq.) These bills all became effective on December 1, 1971.

In my opinion S-569 I stated that these three Acts authorized the county board to order a withdrawal from the county general fund and a transfer of these funds into special fund accounts to be maintained by the particular county officers. By allowing these county officers to maintain certain special funds, the legislature has developed a system to allow these officers to meet their daily business expenses and to make necessary disbursements without going through the cumbersome procedure of obtaining county board authorization before a

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disbursement can be made from the county treasury. Ill. Rev. Stat. 1973, ch. 36, par. 9.

With respect to the power of the county auditor to audit claims made upon the county and to recommend the payment or rejection of such claims, I am of the opinion that the requests of the particular county officers for funds to maintain their special fund accounts must be submitted to the county auditor for auditing and recommendation. However, the county auditor does not have the power to preaudit the expenditure of those funds and make recommendations with regard to disbursements ordered by the particular county officers from the special fund accounts.

Therefore, in answer to your question A, I am of the opinion that a "claim against the county" that must be submitted to the county auditor for auditing includes any claim that will necessitate an order by the county board authorizing disbursement of funds from the county treasury in payment of services or goods furnished to the county.

The answers to questions B and C are in the affirmative.

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Perhaps at this point it is best to quote section 35 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 605):

"Before any claim against a county is audited and allowed, the claimant or his agent shall verify the same by his affidavit, stating that the several items therein mentioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid after allowing all just credits. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, and the nature of the claim is not such that the allowance is discretionary with the county board, such person may appeal from the decision of such board to the circuit court of the same county, upon filing bond with the clerk of such court within twenty days after the rendition of the decision, with such security as shall be approved by such clerk, in the penal sum of \$250, payable to the People of the State of Illinois, for the use of such county, conditioned that he will prosecute the appeal with effect, and pay all costs that may be adjudged against him."

Section 35 includes a method for resolving disputed claims against the county. It is not an exclusive remedy. Original suits against a county may be commenced in the circuit court within the county, a totally different method, of settling the dispute, from appealing to the circuit court from a decision

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of the county board. (County of Stephenson v. Bradley, Inc., 2 Ill. App. 3d 421, 426.) Thus, one of the objects and purposes of section 35 was to offer persons who have a disputed claim against a county a method of resolving the claim other than litigation. The claimant may present the county with a verified claim whereupon the county may audit the claim and make a determination. If the claimant disagrees with the finding of the county board, he may appeal their decision to the circuit court. The Appellate Court, Second District, had the following observation about the object and purpose of section 35:

"We reverse the order insofar as it requires defendant to submit its claim against the county in the manner and form provided in Ill. Rev. Stat. 1969, ch. 34, par. 605. This section, which relates to verification and auditing claims against a county, and to appeals to the circuit court from decisions of the county board, is not an exclusive remedy. Ill. Rev. Stat. 1969, ch. 34, par. 601, provides that suits against a county may be 'commenced' in the circuit court within the county, a totally different method from appealing to the circuit court from a decision of a county board. (Lord v. Bd. of Sup'rs. of Kane County (1942), 314 Ill. App. 161, 164, 165, 41 N.E.2d 106.) The choice of remedy should remain with the party having the claim."

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The county auditor is directed to audit all claims against the county of whatsoever character. Thus, he is to audit claims that are initially presented for payment and as to which no dispute as yet exists. Once a dispute exists as to the payment of a claim, a claimant has two statutory remedies to resolve the dispute: (1) he can directly sue the county pursuant to the provisions of section 31 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 601); or, (2) he can appeal to the circuit court the refusal of the county board to honor his verified claim. (Ill. Rev. Stat. 1973, ch. 34, par. 605.) Thus, the answer to your question D is that the county auditor shall audit all requests for payment.

Turning now to questions E through H, "audit" means to examine the claims to ascertain whether or not they pertain to, and properly itemize the charges for, the goods furnished or work performed, and to check the items as to their correctness in those respects, to assist the county board to determine whether they are just and legal claims. (Rinder v. City of Madison, 158 N.W. 302, 163 Wisc. 525.) The veri-

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fication of the accuracy and veracity of the claim is an essential element of an audit. (Ford v. Springer Land Assn., 41 P. 541; 8 N.M. 37.) In the broad sense, audit includes the approval or rejection of the claim. (People ex rel. McCabe v. Matthies, 72 N.E. 103, 179 N.Y. 242.) However, section 3(a) (Ill. Rev. Stat. 1973, ch. 34, par. 1504(a)) specifically limits the auditor to the recommendation of payment or disapproval of the claim.

It should be pointed out that ascertaining whether an appropriation exists for the payment of the claim and whether or not enough funds are available for the payment of the claim is certainly an essential part of the auditing process.

The county auditor in auditing claims acts in an advisory and ministerial capacity. (1917-18 Op. Atty. Gen. 762.) Albeit, he does have the discretion to recommend payment or rejection of the claim.

Turning to your question I, I am of the opinion that the phrase "all bills submitted" is synonymous with "claims against the county of whatsoever character". (1916 Op. Atty.

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Gen. 760.) Thus, the answer to your question J is in the affirmative.

Section 35 does require that all "claims" or "bills" be verified when the claimant elects to choose the remedy of presenting his claim to the board for a determination. (Ill. Rev. Stat. 1973, ch. 34, par. 605.) Thus, the answer to your question K is in the affirmative.

Turning to your question L, the county board has the power to manage the county funds and business (Ill. Rev. Stat. 1973, ch. 34, par. 403) and to settle all accounts against the county (Ill. Rev. Stat. 1973, ch. 34, par. 404.) Therefore, I am of the opinion that they may pay a bill without receiving the county auditor's recommendation. There must, however, be an appropriation from which the claim may be paid and, of course, enough funds available for the payment of the claim.

Turning to your question M, a non-home rule county has only the powers specifically granted to it by the Constitution (Ill. Const., art. VII, sec. 7) or by statute.

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(Heidenreich v. Ronske, 26 Ill. 2d 360, 362; Arms v. City of Chicago, 314 Ill. 316; Marsh v. People, 226 Ill. 464.)

Since the county board has not been authorized to impose a limit on the time given the auditor to recommend payment or rejection of a claim and furthermore since the county board does not have the statutory authority to treat the claim as approved if the recommendation is not received within the time limit, I am of the opinion that the county is without power to impose such a limit.

Very truly yours,

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