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STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706



March 28, 1973

FILE NO. S-570

COUNTIES:

Funds-

**County Clerk, County Treasurer
and County Recorder**

Honorable Richard S. Simpson
State's Attorney
Lawrence County
Court House
Lawrenceville, Illinois 62439

Dear Mr. Simpson:

You have sent to me a copy of a letter written by Kemper, Fisher, Faust, Lawrence & Co., Certified Public Accountants, Lawrenceville, Illinois, addressed to the Lawrence County Board containing proposals for the handling of county funds. You have requested my opinion as to the legality of these proposals, particularly in light of House Bill 1508, 1510 and 1512.

The letter from Kemper, Fisher, Faust, Lawrence & Co. reads as follows:

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"The new Illinois Constitution has made necessary substantial changes in accounting and physical control procedures by local County Government. We are referring particularly to Section 9 of the new constitution entitled 'Salaries and Fees'. This section states in essence the following:

Compensation of officers and employees and office expenses of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt by the Treasurer of the County. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

Based upon the above constitutional change and based upon what we have recommended and implemented in other counties, we recommend the following:

1. That all offices formerly known as fee offices be given a Petty Cash checking account or Change Fund of \$100 per office to handle necessary emergency cash expenditures. Each office shall be reimbursed upon proper accountability at the regular meetings of the County Board. This fund should never exceed \$100 per fee office.
2. Since there are occasionally demands for emergency payments in excess of \$100, we recommend that a \$500 imprest checking account be established under the dual control of the County Clerk and the County Treasurer. In the event that both the County Clerk and County Treasurer determine

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the payment necessary and that there would be an undue hardship on the payee to wait until the next regular board meeting for payment, a check could be issued and reimbursement to this imprest account made for that expenditure at the next regularly scheduled board meeting.

3. Since the constitution as quoted in the first paragraph is clear, in no case should normal and reoccurring salaries of regular employees be paid other than by regular county order.

4. Expenses of fee offices should be paid from the General County Fund.

5. Fees collected by Fee offices should be turned over to the County Treasurer and deposited in the County General Fund not less than monthly. The County Treasurer should be furnished a report designating fee description and nature of the receipts forwarded from the fee offices.

Presently, County bills are paid by the dual use of warrants and checks. There is no accounting or control reason for the county to utilize both warrants and checks. We recommend that the county go to a straight checking account system with the resulting elimination of warrants. This should result in substantial time savings to the County Treasurer. In order to verify the legality of this recommendation, we suggest that you consult the local States Attorney for his opinion."

House Bill 1508 (P.A. 77-1726) amended and added certain sections to AN ACT to revise the law in relation to county clerks. (Ill. Rev. Stat., 1972 (Supp.), ch. 35, par.

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1, et seq.). House Bill 1510 (P.A. 77-1727) amended and added certain sections to AN ACT to revise the law in relation to recorders. (Ill. Rev. Stat., 1972 (Supp.), ch. 115, par. 1, et seq.). House Bill 1512 (P.A. 77-1728) amended and added certain sections to AN ACT to revise the law in relation to county treasurer. (Ill. Rev. Stat., 1972 (Supp.), ch. 36, par. 1, et seq.).

All three bills were introduced into the House of Representatives on April 1, 1971 and passed both houses of the general assembly on November 11, 1971. They were approved by the Governor and became effective on December 1, 1971.

Below I have quoted two sections from House Bill 1508 which I consider most pertinent to the proposals of the aforementioned accountants. Almost identical sections appear in House Bill 1510 and 1512; the obvious difference being that each bill applies to a different county officer. More particular differences will be discussed later. Section 1.2c of AN ACT to revise the law in relation to county clerk (Ill. Rev. Stat., 1972 (Supp.), ch. 35, par. 1.2c) reads as follows:

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"The county clerk shall file a monthly report summarizing the financial status of his office in such form as shall be determined by the county board. This amendatory Act of 1971 does not apply to any county which is a home rule unit."

Section 1.2d of the same Act (Ill. Rev. Stat., 1972 (Supp.), ch. 35, par. 1.2d) reads as follows:

"The county clerk shall deposit in the office of the county treasurer monthly by the 10th day of the month following, all fee income. The county clerk may maintain the following special funds from which the county board shall authorize payments by voucher between board meetings:

- (a) Overpayments.
- (b) Reasonable amount needed during the succeeding accounting period to pay office expenses, postage, freight, express or similar charges.
- (c) Excess earnings from the sale of revenue stamps to be maintained in a fund to be used for the purchase of additional stamps from the Illinois Department of Revenue.
- (d) Fund to pay necessary travel, dues and other expenses incurred in attending workshops, educational seminars and organizational meetings established for the purpose of providing in-service training.
- (e) Trust funds, for tax redemptions, or for such other purposes as may be provided for by law.

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(f) Such other funds as may be authorized by the county board.

The county clerk shall make accounting monthly to the county board of all special funds maintained by him in the discharge of his duties. This amendatory Act of 1971 does not apply to any county which is a home rule unit."

As indicated earlier, section 4.4 of AN ACT to revise the law in relation to recorders (Ill. Rev. Stat., 1972 (Supp.), ch. 115, par. 4.4) and section 4.3 of AN ACT to revise the law in relation to county treasurer (Ill. Rev. Stat., 1972 (Supp.), ch. 36, par. 4.3) are practically identical in language with said section 1.2d. However, although section 4.4 authorizes the recorder to maintain "trust funds for such purposes as may be provided for by law," the recorder is not explicitly authorized to maintain trust funds for tax redemptions. The same applies to the county treasurer. Also, the recorder and county treasurer must make a monthly accounting of these special funds to the county board through the county clerk.

Additionally, section 4.3 of AN ACT to revise the law in relation to county treasurer (Ill. Rev. Stat., 1972 (Supp.), ch. 36, par. 4.3) differs from said section 1.2d and

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4.4. The difference being that, for obvious reasons, the first sentence of the first grammatical paragraph of section 1.2d does not appear in section 4.3. The general assembly realized that it was unnecessary to direct the county treasurer to turn over the fees he collects to himself. Also, the county treasurer is authorized to maintain five special funds whereas the county clerk and recorder may maintain six special funds. The treasurer is not empowered to maintain a fund for the purchase of revenue stamps from the Illinois Department of Revenue.

I have on this date issued opinion No. S-569, the provisions of which are incorporated herein by reference thereto. A copy of this opinion is enclosed for your reference.

That opinion analyzes in detail the operation of House Bill 1508 (P.A. 77-1726), House Bill 1510 (P.A. 77-1727) and House Bill 1512 (P.A. 77-1728). I have, therein, discussed many of the principles pertinent to the aforementioned proposal number 1 through and including proposal number 4. Therefore, I find it unnecessary to discuss in detail these proposals.

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Suffice it to say that with reference to proposal number 1, I point out in my opinion No. 8-569 that section 1.2d of AN ACT to revise the law in relation to county clerks (Ill. Rev. Stat., 1972 (Supp.), ch. 35, par. 1.2d), section 4.4 of AN ACT to revise the law in relation to recorders (Ill. Rev. Stat., 1972 (Supp.), ch. 115, par. 4.4) and section 4.3 of AN ACT to revise the law in relation to county treasurer (Ill. Rev. Stat., 1972 (Supp.), ch. 36, par. 4.3) do authorize these officers to maintain a petty cash fund pursuant to county board approval. It should be emphasized that officials representing a county can act in its behalf only by authority of the statute applicable to it as a corporation, and in conformity with such statute. (County of Cook v. Lowe, 23 Ill. App. 649). I find no statutory authority allowing any officers, other than the three referred to above, to maintain a petty cash fund.

With regard to proposal number 2, a county clerk, recorder and county treasurer each may maintain a checking account. This checking account will be under the sole control

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of the particular officer. I find no statutory authority for allowing the county clerk and county treasurer, together, to issue checks except as pursuant to county order or warrant. Ill. Rev. Stat., 1971, ch. 36, par. 9; Ill. Rev. Stat., 1971, ch. 102, par. 23.

Turning to proposal number 3, I am in complete agreement that normal and recurring salaries of regular employees ought to be paid by regular county order.

As to expenses of fee officers, not all such expenses need be paid directly from the general county fund. Some expenses may be paid from the special funds maintained by the county clerk, recorder, and county treasurer.

Turning to proposal number 5, I am of the opinion that fees must be turned over to the county treasurer as soon after receipt as possible. Section 9(a) of Article VII of the Illinois Constitution of 1970 reads as follows:

"Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and

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by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes." (Emphasis added)

An explanation of the requirement that fees shall be deposited upon receipt with the treasurer of the unit appeared in the Committee Report of the Committee on Local Government of the Sixth Illinois Constitutional Convention. (VII 6th Ill. Const. Con., Comm. Proposal, p. 1717 (1972)):

"The first sentence of Section 9 prohibits the use of fees as a base for compensating any officer or employee of a local government.

The second sentence provides that fees collected shall be deposited 'upon receipt with the treasurer of the unit.' This language is intended primarily to eliminate the sundry bank accounts which county officers now maintain for their fee depositories, and to require that one central depository must be used in the future. The 'upon receipt' provision requires immediate deposit of fees collected." (Emphasis added)

The plain meaning of the second sentence of section 9(a) of article VII of the Illinois Constitution of 1970 is that fees must be deposited with the treasurer as soon after

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they are received as possible. Thus, any requirement that fees be deposited with the treasurer on a once-a-month basis would be violative of the requirement that fees be deposited "upon receipt" with the treasurer. Therefore, I am of the opinion that the first sentence of the first grammatical paragraph of section 1.2d of AN ACT to revise the law in relation to county clerks (Ill. Rev. Stat., 1972 (Supp.), ch. 35, par. 1.2d) is unconstitutional. Said sentence reads as follows:

"The county clerk shall deposit in the office of the county treasurer monthly by the 10th day of the month following, all fee income.
* * *

Likewise, the first sentence of the first grammatical paragraph of section 4.4 of AN ACT to revise the law in relation to recorders (Ill. Rev. Stat., 1972 (Supp.), ch. 115, par. 4.4) is also unconstitutional. Said sentence reads as follows:

"The recorder of deeds shall deposit in the office of the county treasurer monthly by the 10th day of the month following, all fee income. * * *

With regard to the problem of separability or severability, the Illinois Supreme Court has frequently held that

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if the provisions of a statute which remain after the unconstitutional portion has been stricken are complete in themselves and capable of being executed wholly independently of that which is void, the invalid portion does not render the entire section or act unconstitutional unless it can be said that the legislature would not have passed the statute with the invalid portion eliminated. People ex rel. Holland Coal Co. v. Isaacs, 22 Ill. 2d 477, 484; Myers v. Krajefska, 8 Ill. 2d 322; Vissering Mercantile Company v. Annunzio, 1 Ill. 2d 108.

I am of the opinion that the legislature would have passed the statute with the invalid portion eliminated. Therefore, the unconstitutional sentence is separable from the remaining portions of the statute.

With regard to the recommendations contained in the accounting firm's letter to abandon the warrant system. To do so, the county must have statutory authorization. House Bill 1508, 1510 and 1512 authorize the particular county officers to make disbursements from certain special funds without a supporting warrant or county order. However, the statutes are clear that no disbursements may be made from the county

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treasury without a supporting warrant or county order unless authorized by law. (Ill. Rev. Stat., 1971, ch. 36, par. 9). Furthermore, the necessity of a warrant is made clear by the provisions of section 4 of AN ACT in relation to funds or monies received by public officers or agents of public or municipal bodies, by virtue of their offices or positions (Ill. Rev. Stat., 1971, ch. 102, par. 23):

"No funds, monies, or other things of value, in the hands of the treasurer of any public or municipal corporation, shall be paid out, disbursed or delivered, except upon warrant, draft, or order signed and countersigned by the officers of the public or municipal corporation authorized to sign and countersign the same. Such funds may be disbursed by the treasurer, by check issued or signed by him or his authorized deputy. If required by statute, ordinance or resolution such check shall be countersigned by an officer or agent of the public or municipal corporation on whose behalf such disbursement is made. This provision shall apply to all treasurers, including county treasurers and ex-officio county collectors of taxes and special assessments, and to all payments, disbursements or deliveries, whether under the order of a court or otherwise."

A violation of this provision is declared to be a misdemeanor by section 6 of said Act (Ill. Rev. Stat., 1971, ch. 102, par. 25):

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"The violation of any provision of this act is hereby declared a misdemeanor, and is punishable by a fine not less than ten dollars (\$10.00) or more than five hundred dollars (\$500.00), where the violation is neither intentional or habitual. If the violation is intentional or habitual, it is hereby made a felony, punishable by confinement in the penitentiary not exceeding five years, or by fine not exceeding ten thousand dollars (\$10,000), or both such fine and imprisonment."

Very truly yours,

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