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COUNTIES:

Funds-

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

Honorable John J. Bowman
State's Attorney
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Wheaton, Illinois 60187

Dear Mr. Bowman:

This is in response to your predecessor's letter
wherein he states:

"Our County Board of Supervisors are having difficulty concerning office expenses of county officers involving Chapter 115, Section 4.4; Chapter 36, Section 4.3; Chapter 35, Section 1.2(d), and its relation to the Illinois Constitution of 1970.

I would appreciate your opinion as to the meaning of the following sentences.

The County Clerk may maintain the following special funds from which the County Board shall authorize payments by voucher between board meetings.

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A. Does the phrase 'maintain the following special funds' mean that the officers may (1) keep the cash in the amount set up by the County Board, that is, cash retained from fees collected; or (2) shall the County Board, deposit a certain amount of funds into a bank account made out in the name of the officers, from which he can draw; or (3) can the County Board, after collecting the fee, 'loan' or 'advance' the officer a certain amount of cash which he can place in a bank account and from which he can draw by check for the various fund purposes, or (4) if an advance, or loan, can be made to the officer, can the fund, instead of being separated into several categories, be made one fund, to be divided into various categories as the officer himself decides, or (5) can the County Board authorize as petty cash fund?

B. Do the words 'from which the County Board shall authorize payment by voucher between board meetings' mean that the board will set up the amounts of the funds in the general fund, and the officers will be merely the bookkeeping function of the fund in order to keep a control over and knowledge of the amount of the fund?

C. Does the phrase 'authorized payment by voucher between board meetings' allow a by-pass of the requirement of Chapter 34, Section 605? In other words, can the county officer make up a voucher, which he may hand to the County Treasurer, and can the County Treasurer in turn, from the general fund, issue a draft to the officer? Can all this be done without following Chapter 34, Section 605?

D. If the officer can obtain a payment from the treasurer by voucher, is there a necessity for this transaction being approved by the county auditor.

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E. If the item which the county officer might need is one which can only be obtained by making a cash payment as opposed to a payment by check, can the County Treasurer give cash to the officer?

I would appreciate the answers to these questions with regard also to Public Acts 77-1728 and 77-1727. If there is no way in which a county officer can obtain cash to purchase items prior to the items being delivered, then how can the county office function with regard to expenses?

As you know, there are no other amendments regarding other county officers, such as the Coroner, the Auditor, the State's Attorney, the Circuit Court Clerk and other county officers whose finances are controlled by the County Board. Since these can no longer retain fees, how can they provide for the type of expenditures contemplated by 77-1726? Would it be possible for the County Board to set up a funding procedure similar to the ones set out in the House Bills mentioned above."

Your predecessor has referred to various sections of three recent Acts passed by the 77th General Assembly. 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. 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.

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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.). These bills all became effective on December 1, 1971.

The three sections referred to are almost identical in language. The obvious difference between the three being that each is applicable to a different county officer. Below, I have quoted 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 1.2d will serve as an example for all three sections. Any differences between the sections will be noted below. Said section 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.

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(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.

(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

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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 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 sections 1.2d and 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.

Your predecessor has intimated that the DuPage County Board is having difficulty deciphering the relationship between the statutory sections you refer to in your letter and the Illinois

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Constitution of 1970. The provision of the Illinois Constitution pertinent to these sections is section 9(a) of article VII of the Illinois Constitution of 1970, the relevant portion of which reads:

"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 by ordinance and shall be deposited upon receipt with the treasurer of the unit. * * *"

Under the Illinois Constitution of 1870, the three county officers under discussion were allowed to compensate themselves, their employees and to pay their office expenses from fees collected. (Ill. Const., art. X, sec. 10 [1870]; Ill. Rev. Stat., 1971, ch. 53, par. 37(a)). Now, section 9(a) of article VII of the Illinois Constitution of 1970 makes it crystal clear that officers of units of local governments, which would include the three officers under discussion here, may no longer compensate themselves, their employees, nor pay their office expenses from fees collected. All fees collected must be paid over to the county treasurer.

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Although, generally, in the first group of questions (A), your predecessor asked the meaning of the phrase "maintain the following special funds," his specific questions seek to determine if the aforementioned sections 1.2d, 4.4 and 4.3 were intended to be a replacement for the old fee system, and, if this is so, just how does this new system mechanically operate.

I find it unnecessary to comment directly on each of the five questions propounded in group (A). Suffice it to say, I am of the opinion that the legislative object and purpose of the statutory provisions you refer to in your letter, as illustrated by the above quoted provisions of section 1.2d, was to provide a financial and accounting procedure in replacement of the old fee system.

Before beginning a detailed discussion on this matter of providing a substitute procedure for the fee system, I think it appropriate to recall some basic rules of statutory construction. It is a cardinal rule of statutory construction that a statute must be construed so as to ascertain and give effect to the intention of the general assembly as expressed

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in the statute. (Lincoln Nat. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489; 34 I.L.P., Statutes, sec. 113 (1958)). Generally, the words used in a statute should be given their plain and ordinary or commonly accepted or popular meaning unless such a construction will defeat the manifest intention of the general assembly. (Black Hawk Motor Transit Co. v. Illinois Commerce Comm., 396 Ill. 542; 34 I.L.P., Statutes, sec. 117 (1958)). In construing a statute to give effect to the intention of the general assembly, the court should look to the object or purpose to be attained or subserved by the statute and the evils sought to be remedied. Orlicki v. McCarthy, 4 Ill. 2d 342; 34 I.L.P., Statutes, sec. 114 (1958).

I am of the opinion that the phrase "maintain the following special funds" authorizes the particular county officers to receive, maintain, and disburse certain special funds. In some cases, the county board must authorize a withdrawal from the county general fund and a transfer of said funds into special fund accounts to be maintained by the particular county officers. In other cases, there is statutory authorization empowering the county officers to receive, maintain,

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and disburse certain special funds. A more detailed discussion of the source of these special funds will follow shortly.

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 disbursement can be made from the county treasury. (Ill. Rev. Stat., 1971, ch. 36, par. 9). To reiterate, the county clerk and the recorder are empowered to maintain six special funds, while the county treasurer may maintain five. All three officers are empowered to maintain the following four special funds:

1. Overpayments.
2. Reasonable amount needed during the succeeding accounting period to pay office expenses, postage, freight, express or similar charges.
3. 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.
4. Such other funds as may be authorized by the county board.

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I am of the opinion that the county board may authorize these county officers to maintain these special funds in bank accounts and in cash. Certainly, a petty cash fund will be needed to meet daily expenses. Since fees can no longer be used, these special funds can now be used as a petty cash fund.

These special funds that are supplied by the county board from the county treasury may be, if the county board so desires, commingled, thus, each special fund would be maintained as a bookkeeping entity. Accounting control over the disbursements made from each special fund would be accomplished by a voucher system.

A voucher is a document which shows that services have been performed or expenses incurred. It covers any acquittance or receipt discharging the person or evidencing payment by him. When used in connection with the disbursement of monies it implies some instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to

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whom it is issued to payment. (First Natl. Bank of Chicago v. City of Elgin, 136 Ill. App. 453, 465). The term "voucher" when used in connection with the disbursement of money implies some written or printed instrument in the nature of a receipt, note, account, bill of particulars or something of that character which shows on what account or by what authority a particular payment has been made, and which may be kept or filed away by the party receiving it. (People ex rel. Brinkerhoff v. Swigert, 107 Ill. 494). The county board has the authority to require that certain criteria be listed on the face of the voucher whenever a disbursement is made. A voucher must be drawn every time a disbursement is made from a special fund. By way of suggestion, let me say that there should appear on the face of the voucher the following: The date upon which the voucher is drawn; the name and address of the payee; the identity of the special fund from which the disbursement is made; the signature of the officer authorizing the disbursement; and, the number of the county resolution authorizing the particular county officer to make direct payments from these special funds. Also, in preparing the voucher the county officer

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must explain, list or describe the nature of or reason for the disbursement.

The purpose of the voucher system is to control the disbursement of these special funds. The voucher will protect against a county officer overdrawing a particular special fund, mispending special funds, and misusing special funds, either intentionally or negligently. Even though certain special funds may be commingled in one bank account, a county officer can only draw on a special fund to the limit authorized by the county board; also, he cannot pay a "freight expense" from the "overpayments" special fund. Obviously, the officer should not unnecessarily or improperly expend these special funds.

Each county officer must make an accounting monthly to the county board of all special funds maintained.

I am of the opinion that the following special funds are to be kept in separate bank accounts:

1. 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.

2. Trust funds, for tax redemptions, or for such other purposes as may be provided for by law.

It should be noted that pursuant to section 1 of AN ACT to revise the law in relation to recorders (Ill. Rev. Stat., 1972, (Supp.), ch. 115, par. 1) a county clerk of a county whose population is less than 60,000 shall also serve as recorder. Said section 1 reads as follows:

"The county clerk in counties having a population of less than 60,000 inhabitants shall be the recorder of deeds in his county.

In counties having a population of 60,000 or more inhabitants, there shall be elected a recorder of deeds, as provided by law, who shall hold his office until his successor is qualified."

Section 3 of the Real Estate Transfer Tax Act (Ill. Rev. Stat., 1971, ch. 120, par. 1003) provides, in part, as follows:

"* * * The recorder of deeds or registrar of titles of the several counties shall sell the revenue stamps at a rate of 50 cents per \$500 of value or fraction thereof. The net proceeds from such sale by the recorder of deeds or registrar of titles shall be treated

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as a fee of his office. The recorder of deeds or registrar of titles may use such proceeds for the purchase of revenue stamps from the Department [Department of Revenue]. The county board shall appropriate a sufficient amount of money for the purchase of revenue stamps from the Department until such time as the fees of the recorder of deeds or registrar of titles under this Section are sufficient for such purpose. * * *

Said section 3 provides that the recorder shall treat the net proceeds from the sale of revenue stamps as fee income. This provision became law in 1968 when the old fee system was in existence. By authorizing the recorder to treat the net proceeds as a fee, the general assembly authorized the recorder to receive, maintain, and expend these net proceeds. The net proceeds did not have to go, immediately, into the county treasury. Albeit, the disbursement of these proceeds had to be for the purchase of additional revenue stamps. Since the special fund system is intended to replace the old fee system, I am of the opinion that the recorder or county clerk may keep the net proceeds from the sale of revenue stamps in a separate bank account. The only disbursements that may be made from this special fund are for the purchase of additional revenue stamps or if the fund becomes too large, part of the proceeds

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may be turned over to the county treasurer and the remainder used to purchase additional stamps. The power to turn over excess proceeds to the county treasurer is not extraordinary. Prior to the adoption of the new constitution, fee officers turned over their excess fees pursuant to statutory direction. (Ill. Rev. Stat., 1971, ch. 53, par. 69 and 70). Thus, the county clerk or recorder may receive, maintain, and disburse these net proceeds. Of course, for every disbursement made a voucher must be drawn.

The placement of any trust funds, maintained by the county officers, into separate bank accounts will, of course, depend upon the provisions of the particular statute authorizing the formation of such trust funds.

So far, tax redemptions are the only trust funds specifically mentioned. (Ill. Rev. Stat., 1972, (Supp.), ch. 35, par. 1.2d; Ill. Rev. Stat., 1971, ch. 120, pars. 734 and 740). I am of the opinion that monies paid to the county clerk in the form of tax redemptions should not go into the county treasury but should be placed directly, by the county clerk,

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into a separate bank account until payment can be made to the tax purchaser. Again disbursements from these special funds will be controlled by voucher.

Turning to question (B), as I indicated in my answer to question (A), the county board may authorize a withdrawal from the county treasury to supply the particular county officers with certain special funds. The county officers may maintain these special funds and, most importantly, they may draw on these funds. Other special funds are to be maintained by the particular county officers pursuant to specific statutory provisions.

To directly answer question (B), the phrase "from which the county board shall authorize payment by voucher between board meetings" merely means that the county officer can draw on these special funds. Control over the disbursements made by the county officer from the special funds will be maintained by the voucher system. There may be some confusion caused by the use of the phrase "payment by voucher." It should be remembered that words in a statute may be enlarged

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or restricted according to their real intent. (Petterson v. City of Naperville, 9 Ill. 2d 233; Kloss v. Suburban Cook County Tuberculosis Sanatorium District, 404 Ill. 87). A statute should be construed to give effect to its legislative object and purpose. (Orlicki v. McCarthy, 4 Ill. 2d 342). Thus, I am of the opinion that the phrase "payment by voucher" means that every time a disbursement is made from a special fund a voucher must be drawn to support this disbursement. These vouchers must be turned over to the county board on a monthly basis.

Turning to question (C), first of all, the particular county officers are allowed to draw on the special funds that they maintain. It is not necessary to go to the county treasurer for the issuance of a draft. If the general assembly had intended that the county treasurer control these special funds, they would have said so. Instead the general assembly authorized the particular county officers to maintain these special funds. Besides, two special funds, those for revenue stamps and those for trust funds, are not deposited into the county treasury, therefore, the county treasurer could not possibly

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have control of these funds.

Section 35 of AN ACT to revise the law in relation to counties (Ill. Rev. Stat., 1971, ch. 34, par. 605) provides as follows:

"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."

The object and purpose of section 35 is to provide a procedure for the settlement or litigation of disputed claims

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against the county. I am of the opinion that House Bill 1508, 1510 or 1512 does not authorize the avoidance of the requirements of section 35.

In answer to question (D), I have already pointed out that the particular county officer may make disbursements from these special funds and would not have to obtain a payment from the county treasurer. 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., 1971, ch. 34, par. 1504) states as follows:

"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.

(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."

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It is a general rule that statutes are to be construed in harmony with existing law, if at all possible. (34 I.L.P., Statutes, sec. 130 (1958)). Thus, I am of the opinion that the provisions of section 3 may not be disregarded, however, there is nothing in section 3 that prevents the county officers from making disbursements from special funds just as they made disbursements from the fees they collected. Thus there is no need for the county auditor's approval of disbursements made from these special funds, prior thereto.

With regard to question (E), I have already pointed out that the county board may authorize the establishment of a petty cash fund and may authorize the county officer to make disbursements from the fund, subject to the control by the voucher system.

As answer to the last question, I am of the opinion that the county board may not set up a funding procedure for any other county office unless there is a similar statute to the ones now existing for the office of county clerk, county recorder and county treasurer. Officials representing a county can act in its behalf only by authority of the statutes

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applicable to it as a corporation, and in conformity with such statute. County of Cook v. Lowe, 23 Ill. App. 649.

Very truly yours,

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