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FILE NO. 85-012

JUDICIAL SYSTEM:
Collection of Court Automation
Fee in Traffic and Quasi-
Criminal Cases

Honorable John R. Clemons
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Jackson County Courthouse
Murphysboro, Illinois 62966

Dear Mr. Clemons:

I have your letter wherein you inquire regarding the collection, in traffic and quasi-criminal cases, of the court automation fee authorized by section 27.3a of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1984 Supp., ch. 25, par. 27.3a). For the reasons stated hereinbelow, it is my opinion that the court automation fee in traffic and quasi-criminal cases is to be collected from the

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defendant upon conviction. In cases disposed of on a plea of guilty without a court appearance pursuant to Supreme Court Rule 529 (105 Ill. 2d R. 529), the fee is payable from the bail posted by the defendant.

Section 27.3a provides as follows:

"The expense of establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court in counties of not more than 1,000,000 people shall be borne by the county. To defray such expense in any county having established such an automated system or which elects to establish such a system, the county board may require the clerk of the circuit court in their county to charge and collect a court automation fee of not less than \$1 nor more than \$3 to be charged and collected by the clerk of the court. Such fee shall be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases or by the defendant in any traffic or quasi-criminal case, or both, provided that the record keeping system which processes the case category for which the fee is charged is automated or has been approved for automation by the county board, and provided further that no additional fee shall be required if more than one party is presented in a single pleading, paper or other appearance.

2. Each clerk shall commence such charges and collections upon receipt of written notice from the chairman of the county board together with a certified copy of the board's resolution, which the clerk shall file of record in his office.

3. Such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and shall be remitted monthly by such clerk to the county treasurer, to be retained by him in a special fund designated as the court automation fund. The fund shall be audited by the county auditor, and the board shall make expenditure from the fund in payment

of any cost related to the automation of court records, provided that the expenditure is approved by the clerk of the court and by the chief judge of the circuit court or his designate.

4. Such fees shall not be charged in any matter coming to any such clerk on change of venue, nor in any proceeding to review the decision of any administrative officer, agency or body.

* * *

"

(Emphasis added.)

You have asked at what point in traffic and quasi-criminal cases the clerk is to charge and collect the fee. The answer to that question turns upon the construction given to the clause underscored above. That clause, as applied to traffic and quasi-criminal cases, is ambiguous. It could be construed to provide that "[s]uch fee shall be paid at the time of filing the first pleading, paper or other appearance filed * * * by the defendant in any traffic or quasi-criminal case, or both * * *". It could also be construed, however, as merely providing that "[s]uch fee shall be paid * * * by the defendant in any traffic or quasi-criminal case, or both * * *". The ambiguity arises from the fact that the clause serves two purposes. Firstly, it specifies which parties are liable for the fee -- both plaintiffs and defendants in civil cases, but defendants alone in traffic and quasi-criminal cases. Secondly, it contains a time-of-payment provision. Thus, in civil cases the fee is clearly required to be paid "at the time of

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filing the first pleading, paper or other appearance". The issue here is whether that requirement applies to traffic and quasi-criminal cases as well. It is my opinion that it does not.

The purpose of statutory construction is to ascertain and effectuate the intention of the General Assembly as expressed in the statute. (In re Application of Walgenbach (1984), 104 Ill. 2d 121, 124-25.) If the language of the statute is clear, it must be given effect as written. (In re Marriage of Logston (1984), 103 Ill. 2d 266, 277.) Where the language of the statute is ambiguous, however, as is the case here, resort may be had to extrinsic aids of construction. (Laue v. Leifheit (1984), 105 Ill. 2d 186, 196.) Thus, it has been held that consideration may be given to the treatment of the disputed issue by other legislation on the same or a related topic. Bergin v. Board of Trustees (1964), 31 Ill. 2d 566, 573-74.

The General Assembly has enacted a number of other fee statutes. Those statutes have generally, if not universally, provided either that liability in criminal and quasi-criminal cases is contingent upon conviction or that such cases are entirely exempt from the fee. Thus, the clerk's fee (see Ill. Rev. Stat. 1983, ch. 25, par. 27.2(16)), the county court system fee (Ill. Rev. Stat. 1983, ch. 34, par. 429.29), the traffic and criminal conviction surcharge fee (Ill. Rev. Stat.

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1983, ch. 38, par. 1005-9-1(c)) and the drivers' education fee (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 16-104a) are charged in criminal and quasi-criminal cases only upon conviction; and the county law library fee (Ill. Rev. Stat. 1983, ch. 81, par. 81) is not imposed in such cases.

The treatment given to this matter by other statutes is not dispositive of the issue, however. It is necessary to determine the intention of the General Assembly in enacting this statute. In order to ascertain that intention, the legislative history of the statute may be considered. (People v. Boykin (1983), 94 Ill. 2d 138, 141.) Here the legislative history lends strong support to the conclusion that in traffic and quasi-criminal cases the imposition of the court automation fee was intended to be contingent upon conviction. Speaking on the floor of the General Assembly, Representative Steczo, the sponsor of the bill, explained the provision as follows:

"* * * I would like to detail the provisions of this Bill where this particular surcharge could be levied. First, in a civil lawsuit, the fee would be paid by each party at the time each party filed their first pleading. Or [sic] traffic or quasi-criminal cases, which are municipal ordinance cases, they would be paid by the defendant upon a conviction. * * *" (Emphasis added.) (Remarks of Rep. Steczo, June 30, 1984, House Debate on House Bill 2892, at 115.)

General principles of statutory construction also support this conclusion. It is well settled that an ambiguous

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statute is to be construed, if possible, so as to promote its essential purposes while avoiding doubts as to its validity. (People v. Nastasio (1960), 19 Ill. 2d 524, 529.) Since the advance collection of the court automation fee in traffic and quasi-criminal cases is not essential to the purpose of the statute, which is to provide a mechanism for the funding of the automation of the clerk's record-keeping system, it is appropriate to consider whether there are constitutional problems inherent in a construction which would require such advance payment.

To require a defendant in a criminal or quasi-criminal action to pay the court automation fee "at the time of filing the first pleading, paper or other appearance" would in effect establish the payment of the fee as a condition precedent to the right to file even essential defensive pleadings. There are a number of constitutional objections which could be levied against any such requirement. (See Ill. Const. 1970, art. I, §§ 8, 12; Goldberg v. Kelly (1969), 397 U.S. 254; and Williams v. Gottschalk (1907), 231 Ill. 175, 179.) Because there is a reasonable alternative construction of the statute which, while promoting its essential purpose, avoids possible constitutional problems, the construction which would require the court automation fee in traffic and quasi-criminal cases to be paid "at the time of filing the first pleading, paper or other appearance" must be rejected. Therefore, it is my opinion that the fee in such cases is to be charged only upon conviction.

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You have also asked whether, in cases governed by Supreme Court Rule 529 (105 Ill. 2d R. 529), the court automation fee is payable from the bail posted by the defendant. That question has been explicitly answered in the affirmative by the amendment to Rule 529 adopted by the supreme court on March 27, 1985, effective May 1, 1985, which added the court automation fee to the list of costs to be paid from the bail money. Therefore, I do not believe that it is necessary to elaborate on this issue.

Very truly yours,



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