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STATE OF ILLINOIS
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May 22, 1973

FILE NO. S-593

COUNTIES:
Power to purchase
voting machines

Honorable Edward P. Drolet
State's Attorney
Kankakee County
Kankakee, Illinois 60901

Dear Mr. Drolet:

I have your letter dated March 30, 1973, wherein you revise and clarify an earlier request for a legal opinion pertaining to the purchase of voting machines by Kankakee County. In your latest letter you state, in part, as follows:

> "The County Board has requested that I seek your opinion as to whether, under Illinois law, the purchase of voting machines by the County of Kankakee, to comply with the requirements of Section 24-1.1, Chapter 46, Illinois Revised Statutes, constitutes an 'ordinary and necessary capital expenditure, authorized by law'."

Section 24-1.1 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 24-1.1) provides that certain county boards

must provide voting machines or electronic voting systems for each precinct commencing with the general election in November 1974. Said section 24-1.1 provides, in part, as follows:

> "The county board of each county having a population of 40,000 or more, with respect to all elections for which the county board or the county clerk is charged with the duty of providing materials and supplies, and each board of election commissioners in a municipality having a population of 40,000 or more with respect to elections under its jurisdiction, must provide either voting machines in accordance with this Article or electronic voting systems in accordance with Article 24A for each precinct for all such elections commencing with the general election in November, 1974, except in elections held pursuant to the provisions of Section 12 of Article VI of the Constitution relating to retention of judges in office, in which event, the special ballot containing the propositions on the retention of judges may be placed on the voting machines or devices."

The issue that you present is whether or not the purchase of voting machines would be an ordinary and necessary capital expenditure under Illinois law.

We must discern whether a voting machine is a capital expenditure. The Illinois Supreme Court in People ex rel. Schlaeger v. Reilly T. & C. Corp., 389 Ill. 434, at page 438,

in discussing the distinction between operating expenses and capital expenditures made the following statement:

> "* * * Operating expenses necessarily include salaries for clerical assistance, travel, and the purchase of supplies and printing. Typewriters, desks, chairs, or other items of equipment would constitute capital expenditures, and not 'operating expense,' as defendant asserts. * * *"

The California District Court of Appeals (Marin Union Junior College Dist. v. Gwinn, 288 P. 799; 106 Cal. App. 12) in discussing distinction between maintenance expense and capital expenditures, stated as follows:

> "For years the Legislature has recognized the well-established economic distinction between cost of capital expenditures and cost of maintenance. Throughout the school law this distinction has appeared in the special provisions for taxation (or for the issue of bonds) for the purchase of school lands and erection of school buildings and in the special provisions for maintenance. It is further illustrated by the numerous statutes calling for the creation of special building funds as distinct from the general, or maintenance, funds. It is based upon the sound economic principle that a capital expenditure is in the nature of an investment for the future, whereas the cost of maintenance is a definite present expense."

Operating and maintenance expenses are in the nature of day to day expenses. A capital expenditure is a more permanent kind of expenditure usually involving large sums of money.

I am of the opinion that the purchase of voting machines to comply with the requirements of section 24-1.1 of the Election Code (Ill. Rev. Stat., 1971, ch. 46, par. 24-1.1) would be a capital expenditure under Illinois law.

It should be emphasized that this opinion should in no way be construed as a reflection upon the wisdom of purchasing voting machines, which is within the prerogative of the county board, nor as an interpretation of any Federal laws, rules and regulations.

Your correspondence also indicates that your County Board expects to make this purchase from Federal Revenue Sharing funds. Use of such funds are subject to the same requirements as expenditure of other county funds; i.e., a valid appropriation is required.

Very truly yours,

ATTORNEY GENERAL