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FILE NO. S-881

**FEES AND SALARIES:
State's Attorney's Fees**

Honorable John J. Bowman
State's Attorney, DuPage County
207 South Reber Street
Wheaton, Illinois 60187

Dear Mr. Bowman:

This responds to your request for an opinion in which you raise three questions concerning the fees to which the office of state's attorney is entitled under section 8 of "AN ACT concerning fees, salaries, etc." (Ill. Rev. Stat. 1973, ch. 53, par. 8.) With your request you have supplied a copy of your opinion on the subject, which provided my office with extensive legal citations that were helpful in preparation of this opinion. Section 8 provides in pertinent part:

"§ 8. State's attorneys shall be entitled to the following fees:

* * *

For each conviction in other cases tried before judges of the circuit court, \$15; except

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that if the conviction is in a case which may be assigned to an associate judge, whether or not it is in fact assigned to an associate judge, the fee shall be \$5.

* * *

For each day actually employed in the trial of a case, \$10; in which case the court before whom the case is tried shall make an order specifying the number of days for which a per diem shall be allowed.

* * *

All the foregoing fees shall be taxed as costs to be collected from the defendant, if possible, upon conviction. * * *

No fees shall be charged on more than 10 counts in any one indictment or information on trial and conviction; nor on more than 10 counts against any one defendant on pleas of guilty."

You state in your letter your first question as follows:

"The specific question is whether the five (\$5.00) dollar conviction fee applies to pleas of guilty to charges of violations of Chapter 95 1/2, Illinois Revised Statutes, 1973, when said pleas of guilty are entered before associate judges sitting in the 'field' courts of this Circuit. There is a question in the minds of the Clerk and the Chief Judge as to whether the phrase 'tried before' in the section quoted above means a full adversary hearing, with testimony and evidence being presented to the court, and a finding of guilty being entered by the court. It should be noted here that an Assistant State's Attorney from this office is assigned to each field court to prosecute all violations of Chapter 95 1/2 pursuant to section 16-102 of Chapter 95 1/2."

It is a cardinal rule of statutory construction that

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the intent and meaning of a statute are to be determined from the entire statute. A statute is passed as a whole and not in parts. Each section and provision should be construed in connection with every other part or section. (Huckaba v. Cox, 14 Ill. 2d 126, 131.) The statute as cited above, specifically provides that "no fees shall be charged * * * on more than ten counts against any one defendant on pleas of guilty". The clear implication of this provision is that the fee applies to all convictions, including those based upon pleas of guilty.

It has always been the interpretation of the Supreme Court of Illinois that the state's attorney is entitled to a conviction fee upon a plea of guilty by the defendant. In Borschenious v. The People, 41 Ill. 236, the defendant was charged with ten counts of selling liquor without license. The defendant pleaded guilty and was fined \$10.00 on each count. A conviction fee of \$5.00 was taxed upon each count in favor of the state's attorney. The defendant moved to quash the fee bill on the ground that only one conviction fee should have been taxed, and not on the ground that no fee should have been taxed when a defendant pleads guilty. The court overruled the motion, whereupon the defendant appealed. The court stated as follows,

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at page 237:

"In cases of this character, the statute allows the State's Attorney a fee of five dollars for each conviction. The appellant insists, that, in this case, there has been but one judgment and consequently but one conviction. It is true there is but one entry of a judgment, but it will be observed that this entry, as above set forth, is a several judgment upon each count in the indictment, and by this judgment the defendant is 'convicted' of ten distinct violations of the statute, and fined ten dollars for each violation * * * "

See, also, People v. Williams, 232 Ill. 519.

It is, therefore, my opinion in answer to your first question that the five dollar conviction fee applies to convictions obtained by pleas of guilty entered in open court as well as to convictions obtained after a full adversary hearing.

You state your second question as follows:

"If the five (\$5.00) dollar conviction fee applies to pleas of guilty entered in open court, does it also apply to written pleas of guilty filed with the Clerk along with a pre-determined amount constituting fine and costs pursuant to Chapter 110 A Section 529(a) of the Illinois Revised Statutes, 1973? It should be noted here that this office performs no function in connection with such pleas of guilty; except to stand ready to prosecute the charges in open court, should the defendant so elect."

Supreme Court Rule 529 (Ill. Rev. Stat. 1973, ch. 110A, par. 529) provides as follows:

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"All traffic offenses, except those requiring a court appearance under Rule 551 and those involving offenses set out in Rule 526(b), 526(c) and 526(e) may be satisfied, without a court appearance, by a written plea of guilty and payment of a fine in the amount of \$10 plus costs, except that a charge of speeding more than 10 mph but not more than 20 mph over the speed limit may be satisfied by a written plea of guilty and payment of a fine at the rate of \$1 for each mile per hour in excess of the speed limit, plus costs. A charge of violating § 15-111 of the Illinois Vehicle Code (Truck Overweight) (Ill. Rev. Stat. 1969, ch. 95 1/2, para. 15-111) may be satisfied without a court appearance by a written plea of guilty and payment of a fine in the amount fixed by statute, plus costs."

The state's attorney is entitled to fees only as provided by statute. Under the provisions of section 8, supra, under discussion, he is entitled to fees only "in cases tried before judges of the circuit court". Conviction upon a plea of guilty without a court appearance is distinguishable from a plea of guilty in open court. When a plea of guilty is entered in open court, the state's attorney is present and before a judge. Under Rule 529, however, a written plea of guilty is merely filed with the clerk. No court appearance is required and the state's attorney makes no appearance before a judge. Therefore, it is my opinion that the state's attorney is not

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entitled to a fee for a conviction obtained by a written plea of guilty entered pursuant to Supreme Court Rule 529.

This distinction between convictions obtained "before judges of the circuit court" and convictions obtained "without a court appearance" is supported by section 14 of the Act under consideration (Ill. Rev. Stat. 1973, ch. 53, par. 31), which provides in part as follows:

"§ 14. The fees of the clerk of the circuit court, in counties of the first and second class, shall be paid in advance, except as herein provided, and shall be as follows:

* * *

(B) Fees in criminal cases, but not in advance:

* * *

(3) For each person charged with a traffic offense or a conservation offense or the violation of any municipal ordinance for which a court appearance is required under Supreme Court Rules, or for a truck overweight offense for which a fine of more than \$25 is required by statute, \$10

(4) For each person charged with any traffic, conservation or municipal ordinance offense not included in subparagraph (3), above, \$5

* * *

(emphasis added.)

The clerk of the circuit court is entitled to a greater fee when a court appearance is required than when one is not.

You state your third question as follows:

"Does the phrase, 'For each day actually employed in the trial of a case * * *' mean a

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full day session of the court devoted primarily to the trial of one specific case?

The factual background against which this question was raised might prove helpful in your consideration of it. The field courts of this Circuit hear charges of violations of Chapter 95 1/2 and of municipal ordinances only. (Violations of municipal ordinances are prosecuted by the municipal attorney and do not concern us here.) In each session of field court, the Assistant State's Attorney present, must try those charges of violation of Chapter 95 1/2 to which pleas of not guilty have been entered. The number of trials in each session varies from a very few to as many as forty (40), and the duration of the trials varies widely with the seriousness of the charge and the complexity of the proof required. It is my feeling that upon a finding of guilty by the court after a trial of the charge, that the State's Attorney is entitled to the statutory fee for 'day actually employed in the trial of a case' whether or not the duration of the trial was a full session of court or only a comparatively short time."

The answer to the question turns on whether "day" means a full day or whether the term "day" also includes a fraction of a day. The prevailing legal concept of "day" is that it is an indivisible unit consisting of a 24 hour period from midnight to midnight. Courts do not ordinarily take cognizance of fractions of days. (Rock Finance Co. v. Central Nat. Bank, 339 Ill. App. 319.) Thus, in State ex rel. Greb v. Hurn, 172 P. 1147 (Wash. 1918), the Supreme Court of Washington held that under a statute fixing a per diem compensa-

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tion for every day that an official court reporter was in actual attendance upon the court, he was entitled to the compensation named for every day on which he performs substantial service, although the time actually consumed is merely a fraction of the day. Also, see the annotation at 1 A.L.R. 276 on this subject.

I, therefore, am of the opinion that the state's attorney is entitled to the fee for each day actually employed in the trial of a case, whether the trial consumes a full day or only a fraction of a day.

Very truly yours,

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