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FILE NO. S-1196

MUNICIPALITIES:
Disposition of Fees
Collected By Municipal
Clerks

Frank A. Kirk
Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Mr. Kirk:

This is in response to your letter concerning the proper disposition of fees collected by a municipal clerk as his statutory service charge for the issuance of hunting and fishing licenses (Ill. Rev. Stat. 1975, ch. 61, par. 3.37; ch. 56, par. 5.22) for registration and certification of vital records (Ill. Rev. Stat. 1975, ch. 111 1/2, pars. 73-7, 73-10 and 73-25), and for voter registration. (Ill. Rev. Stat. 1975, ch. 46, par. 4-25.) You refer to section 9(a) of article VII

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of the Illinois Constitution of 1970 which requires fees collected by an officer of a unit of local government to be deposited with the treasurer of the unit upon receipt of said fees and precludes an officer of a unit of local government from being compensated from fees collected. You note that in the above-cited instances the clerk is not performing a municipal duty as an officer of the unit of local government but rather appears to be acting as an agent of the State. In light of this distinction you specifically ask whether these fees may be retained by a municipal clerk as personal compensation or whether such fees must be deposited with the municipal treasurer as municipal funds.

It is my opinion that section 9(a) of article VII of the Illinois Constitution of 1970 requires a municipal clerk to pay into the municipal treasury as municipal funds all fees which he is authorized to receive for the issuance of hunting or fishing licenses, or for the registration or certification of vital records. This constitutional provision does not apply to the per diem to be paid to a municipal clerk who acts as a deputy voting registrar under section 4-25 of The Election Code. Ill. Rev. Stat. 1975, ch. 46, par. 4-25.

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Section 9(a) provides:

"(a) 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. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes."

This constitutional policy is embodied in the provisions of "AN ACT to provide for the timely deposit of fees collected pursuant to law by any elected or appointed official of local government". (Ill. Rev. Stat. 1975, ch. 85, pars. 721 and 722.) These constitutional and statutory provisions make it clear that officers of units of local government may not compensate themselves or their employees, nor pay their office expenses from fees collected. All fees collected must be paid over upon receipt to the treasurer of the unit. The issue, therefore, is whether an officer of a unit of local government remains within the prohibition of section 9(a) of article VII of the Illinois Constitution of 1970 when he is acting as an agent of the State.

The question was considered in the recent case of City of Freeport v. Schulz, 37 Ill. App. 3d 294, wherein the Illinois Appellate Court held that fees paid to a city clerk who acts as a local registrar under the Vital Records Act

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(Ill. Rev. Stat. 1975, ch. 111 1/2, pars. 73-1 et seq.) are to be paid over to the city although the city had not enacted an ordinance requiring the clerk to turn over the fees collected, as authorized by section 10 of the Vital Records Act. (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 73-10.) The court considered the argument that such fees remained as personal compensation of the clerk because he was acting as an agent of the State rather than as an officer of the city. The court dismissed this distinction as a basis for permitting the clerk to retain such fees as compensation. The court recognized that even if the city clerk were to be considered as an agent of the State, he was acting, and thereby collecting the fees, by virtue of his office. The court stated at page 296:

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* * *

The fees received by the Local Registrar were due to the fact that he was City Clerk. The fees were in compensation for official acts — not personal acts. If it be granted that he was made an agent of the state government, his relations to the city were not thereby changed. He was still its officer, receiving these fees because he was. He was given a fixed salary with the express limitation that it should be his complete compensation. He agreed that all other moneys received by him officially should be paid into the treasury of the city. He was given office accommodations and clerks to assist him. We hold that the fees in question were received

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by or due to the City Clerk in his official capacity as City Clerk and should be paid over to the City of Freeport. See The People v. Witzeman, 268 Ill. 508, 512, 109 N.E. 335; S.H.A. Const. Art. VII, sec. 9.

* * *

In light of the court's decision in this case, there is no doubt that fees collected by a municipal clerk for registering vital statistics under section 10 of the Vital Records Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 73-10), and for certifying copies of such registrations under section 25 of the Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 73-25), are to be paid into the municipal treasury and may not be retained by the clerk as personal compensation.

The same conclusion is to be reached with regard to fees charged by a municipal clerk for the issuance of fishing and hunting licenses. Pursuant to section 5.22 of the Fish Code of 1971 (Ill. Rev. Stat. 1975, ch. 56, par. 5.22) and section 3.37 of the Game Code of 1971 (Ill. Rev. Stat. 1975, ch. 61, par. 3.37), a city clerk may charge a fee for the issuance of hunting and fishing licenses. Here too, the clerk is acting as an agent of the State. He holds this position by virtue of his office and therefore collects these fees by virtue of his office. The provisions of section 9(a) of

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article VII of the Constitution, as well as the court's reasoning in City of Freeport v. Schulz, supra, dictates the conclusion that a municipal clerk who collects fees for the issuance of fishing or hunting licenses must pay such fees over to the municipal treasurer as municipal funds and he may not retain such funds as his personal compensation. Whether the municipality has enacted an ordinance requiring the clerk to deposit fees so collected with the treasurer of said unit is not material.

Section 9(a) of article VII of the Illinois Constitution of 1970 does not apply to the compensation paid to a municipal clerk who acts as a deputy voting registrar under section 4-25 of The Election Code. (Ill. Rev. Stat. 1975, ch. 46, par. 4-25) This section requires the county board to set a per diem between \$5 and \$15 to be paid deputy voting registrars for each day they are employed as such. Because there is no fee charged to a voter for his registration, the municipal clerk is not being compensated from fees collected. Furthermore, the compensation paid to a municipal clerk acting as a deputy registrar is based upon daily employment by the county rather than the performance of a particular governmental

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service for an individual member of the public. The provisions of section 9(a) of article VII of the Constitution apply only to fees and not to the per diem paid to a municipal clerk who acts as a deputy voting registrar under section 4-25 of The Election Code. Because the municipal clerk's compensation is set by the municipality (Ill. Rev. Stat. 1975, ch. 24, pars. 3-13-1 and 3-13-2), if the clerk performs his duties as a deputy voting registrar during his regular hours as a city clerk and with the aid of municipal facilities and personnel, the disposition of the per diem earned for performing such duties is a matter to be determined by the municipality.

Very truly yours,

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