



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 96-013

REVENUE:
Error by County Clerk Resulting in
Erroneous Distribution of Tax Revenue

Honorable Marshall E. Douglas
State's Attorney, Rock Island County
Rock Island County Courthouse
Rock Island, Illinois 61201

Dear Mr. Douglas:

I have your letter wherein you inquire: 1) whether a municipality which received deficient tax distributions because property was erroneously omitted from a tax increment financing district may maintain an action against those public officials having a duty to extend, collect and distribute taxes; 2) whether taxing bodies which received excess distributions due to the error are liable to repay the excess by order or agreement; and 3) whether the county, in its corporate capacity, may be liable to the municipality based upon the acts or omissions of one or more of its officers. For the reasons hereinafter stated, it is my opinion that: 1) a county clerk and/or collector may be held liable personally and upon his or her bond for negligence in

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carrying out the ministerial duties of his or her office; 2) taxing bodies which receive excess distributions as a result of an error in the extension or collection and distribution of taxes which resulted in another taxing body receiving deficient distributions may be required to repay the excess amount and may, therefore, enter into a settlement agreement concerning the manner of repayment; and 3) the county, in its corporate capacity, is not liable for the default of its officers in carrying out their statutory duties.

You have stated that several years ago a municipality in Rock Island County designated a redevelopment project area and adopted tax increment allocation financing (TIF) pursuant to Division 74.4 of the Municipal Code (65 ILCS 5/11-74.4-1 et seq. (West 1994)). The county clerk followed the procedures set out in section 11-74.4-9 of the Illinois Municipal Code (65 ILCS 5/11-74.4-9) (West 1994)) for the extension of taxes. After creation of the TIF district, several lots located therein were developed as a subdivision. For two years, however, the collector's books prepared by the county clerk pursuant to section 18-35 of the Property Tax Code (35 ILCS 200/18-35 (West 1994)) did not show that the property was in the TIF district. Taxes relating to the properties were therefore extended, billed, collected and distributed to the various taxing bodies, but the portion of taxes attributable to the increase in current equal-

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ized assessed valuation over the initial equalized assessed value was not allocated or paid to the municipal treasurer for deposit into the TIF fund as required by section 11-74.4-8 of the Municipal Code (65 ILCS 5/11-74.4-8 (West 1994)). Approximately \$100,000 was not distributed to the municipality due to the error, and that amount was erroneously paid to other taxing districts. The error has been corrected for the current and future tax years, but the municipality desires to recoup the funds which were incorrectly distributed.

Firstly, you ask whether the county clerk and/or the collector may be liable, either on their bonds or otherwise, for the amount of the error. From the facts you have stated, it appears that the clerk erred in preparing the collector's books. Section 18-35 of the Property Tax Code (35 ILCS 200/18-35 (West 1994)) specifically requires the county clerk to prepare the collector's books and provides, in part:

" * * * If a municipality has adopted tax increment allocation financing under Division 74.4 of Article 11 of the Illinois Municipal Code, the county clerk, or clerks if a municipality is located in more than one county, shall provide additional columns for the initial equalized assessed value, for the extension of the taxes and other purposes, and for the amount of the tax to be deposited in the special tax allocation fund. * * *"

Further, the county clerk is required to issue a warrant, under his or her signature and official seal, commanding the collector to collect the sums set forth, and to pay the taxes collected to

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the officers entitled to them. (35 ILCS 200/18-265 (West 1994).) The collector is required to pay over the taxes as directed by the warrant. (35 ILCS 200/20-50 (West 1994).) However, the collector is required annually to file with the county clerk a verified, detailed list of errors including errors in footing of tax books. (35 ILCS 200/20-165 (West 1994).) Thus, if the error in question is one of which the collector knew or reasonably should have known, he or she may have erred in not timely reporting it to the county clerk. Therefore, your query whether the collector can stand on the warrant may involve fact issues which cannot be resolved herein.

A county clerk has no authority to levy taxes or determine whether taxes have been legally assessed; his or her duties with respect to the extension of taxes are purely ministerial. (City of Rockford v. Gill (1979), 75 Ill. 2d 334, 342; People ex rel. Smith v. National Plate Glass Co. (1931), 344 Ill. 340, 345.) It is well recognized that the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq. (West 1994)) provides immunity only for acts which are discretionary in nature, and does not provide immunity for acts which are ministerial in nature. (Bonnell v. Regional Board of School Trustees of Madison County et al. (1994), 258 Ill. App. 3d 485, 488-89.) Thus, the Act provides no immunity for an error of the county clerk in the extension of taxes.

When the Property Tax Code provides a remedy for an error in the extension or collection of taxes, such a remedy is exclusive. (Board of Education v. Hess (1986), 140 Ill. App. 3d 653, 657.) In the cited case, the county clerk had failed to extend the school district's levy in the correct amount, resulting in loss of revenue to the district. The court held that section 222 of the Revenue Act of 1939 (Ill. Rev. Stat. 1983, ch. 120, par. 703; now codified at 35 ILCS 200/14-40 (West 1994)), which permits the addition of an erroneously omitted tax to the levy for a subsequent year, provided the district's exclusive remedy, so that the county clerk was not liable for the error. In the present circumstances, however, the Property Tax Code does not appear to provide a remedy. Sections 14-40, 18-145 and 20-170 et seq. (35 ILCS 200/14-40, 18-145, 20-170 et seq. (West 1994)) permit corrections when the amount of tax actually collected is too small or too great. Section 23-40 (35 ILCS 200/23-40 (West 1994)) permits the correction of informalities prior to collection of taxes. The circumstances here indicate that the correct amount of tax has been collected from the owners of the property in question. Only the distribution of that amount to various taxing bodies was in error.

Because the county clerk is not protected by immunity or an exclusive statutory remedy, it is my opinion that he or she may be held liable personally and on his or her bond for the

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described error. Liability of the clerk is a prerequisite to the liability of the sureties, since the liability of the sureties on an official bond is as great, but no greater than, the liability of the officer while acting in his or her official capacity.

Board of Education v. Hess (1986), 140 Ill. App. 3d 653, 660.

Secondly, you ask whether taxing bodies to which funds were erroneously distributed may be required to pay them over to the municipality, or, alternatively, may enter into agreements to permit the county collector to satisfy the deficiency from future distributions. Although this issue has not been addressed with respect to TIF district distributions, there is authority for permitting one taxing district to recover from another taxes which were erroneously extended and collected. Thus, in Trico Community Unit School Dist. No. 176 v. Steeleville Community Unit School Dist. No. 138 (1959), 22 Ill. App. 2d 39, certain property lying within the Trico district was taxed as though it were in the Steeleville district. In part due to the omission of the subject property from the Trico district, that district's levy exceeded the maximum authorized rate. The county clerk extended the tax at the maximum rate, and the Trico district therefore received less in revenue than it had levied. Because the Steeleville district levy was spread over the additional property, its rate was lower than it would otherwise have been and it received its entire levy, but no additional funds. The court

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held that the Steeleville district was accountable to the Trico district for the taxes received on the subject property. The court distinguished Walser v. Board of Education (1896), 160 Ill. 272, which reached an opposite conclusion on facts similar but for the circumstance that neither school district exceeded its maximum tax rate and each received the full amount of its levy. In that instance, there was no monetary loss to the district as an entity. Because of its actual loss of revenue, the municipality in the present case is in a position which is analogous to that of the Trico district.

The basis for the ruling in Trico Community Unit School Dist. No. 176 v. Steeleville Community Unit School Dist. No. 138, is that municipal corporations, like individuals, are accountable for moneys received by them which in equity and good conscience belong to another. That rule, in my opinion, is applicable to the present case. Taxes were extended and collected as levied. Due to an error, the municipality received less than the amount to which it was entitled. The other taxing districts, unlike the Steeleville district, may have received more than that to which they were entitled. As a matter of equity, those districts which received the excess distribution should be accountable to the municipality to which the money properly belonged.


Because the other taxing bodies are accountable to the municipality for the funds, there exists a valid claim against

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each of them. While public bodies cannot expend funds for purposes other than those which are statutorily authorized, they can pay and settle valid claims. Therefore, in my opinion, the other taxing bodies may enter into agreements with the municipality and/or the county collector regarding the payment of the municipality's claims.

Lastly, you inquire whether the county may be held liable for the default of its officers in carrying out their statutory duties. As a general principle, it cannot. (Moy v. County of Cook (1994), 159 Ill. 2d 519; Savoie v. Town of Bourbonnais (1950), 339 Ill. App. 551, 563.) In Moy v. County of Cook, it was held that the county was not liable on the basis of respondeat superior for the acts or omissions of the sheriff in administration of the county jail. Similar reasoning applies with respect to the acts or omissions of the county clerk in extension of taxes. The duties of the clerk are imposed by statute, and are not subject to the direction or control of the county or any of its other officers. Therefore, no derivative liability is created.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL