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SPRINGFIELD

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FILE NO. S-654

COUNTIES:

Expenditure of Revenue Sharing Funds

Honorable Kelly D. Long
State's Attorney
Montgomery County
Hillsboro, Illinois 62049

Dear Mr. Long:

I have your letter of recent date wherein you
state:

"I have been requested by the County Board of Montgomery County, Illinois, to request your opinion as to the effect of the provisions of Section 2103, Chapter 34, Illinois Revised Statutes, on the appropriation and budgeting of Federal Revenue Sharing funds for this fiscal year.

Montgomery County, Illinois, did not include any Federal Revenue Sharing funds in its budget for the fiscal year December 1, 1972, through November 30, 1973, nor did it include any proposed expenditures of these

funds in its Annual Appropriation Ordinance. At the time of the adoption of the Budget and Appropriation Ordinance, the County Board was unable to make any provision for Federal Revenue Sharing funds since the amount to be received was unknown, as were the regulations pertaining to expenditures.

Question: Can Montgomery County, Illinois, amend its present Budget and Appropriation Ordinance to include receipts and expenditures of Federal Revenue Funds?

Question: If Montgomery County, Illinois, cannot amend its present Budget and Appropriation Ordinance to include receipts and expenditures of Federal Revenue Sharing funds, what accounting and budgetary procedures may be used in order to expend Federal Revenue Sharing funds, thus far received, during the current fiscal year?"

Section 3 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1971, ch. 34, par. 2103) reads in pertinent part:

"After the adoption of the county budget, no further appropriations shall be made at any other time during such fiscal year, except as provided in this Act. * * * "

If the budget of Montgomery County were to be amended to include the receipt and expenditure of Federal Revenue Sharing funds, you would, by necessity, be making an additional appropriation of Federal Revenue Sharing funds which would be in contravention of the aforementioned statutory provision.

However, a county board may by a two-thirds vote make appropriations in excess of those authorized by the budget in order to meet an immediate emergency. (Ill. Rev. Stat. 1971, ch. 34, par. 2103.) Whether an emergency exists is a factual question which, in the first instance, must be determined by the county board. If the county board, by proper resolution, determines that an emergency does in fact exist, an appropriation in excess of those authorized by the budget may be made.

Other than the supplemental budget provisions contained in section 3.2 (Ill. Rev. Stat. 1971, ch. 34, par. 2103.2) of the aforementioned statute, which are inapplicable, said section 3 is apparently the only method available by which the county budget can be amended.

In your second question you have asked what accounting and budgetary procedures may be used in order to expend the Federal Revenue Sharing funds if the Budget and Appropriation Ordinance cannot be amended. Section 123 of the State and Local Fiscal Assistance Act of 1972 limits the expenditure of Federal Revenue Sharing funds as follows:

"In order to qualify for any payment under subchapter I of this chapter for any entitlement period beginning on or after January 1,

1973, a State government or unit of local government must establish * * * to the satisfaction of the Secretary that - * * *

(4) [I]t will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues;
* * * "

31 U.S.C.A., sec. 1243.

In my opinion No. S-593, May 22, 1973, I stated that the use of Federal Revenue Sharing funds is subject to the same requirements as expenditures of other county funds, i.e., a valid appropriation is required.

In regard to the expenditure of county funds, section 4 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" provides in part:

" * * * [N]o contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been previously made."

Ill. Rev. Stat. 1971,
ch. 34, par. 2104.

The obvious problem presented by the above statutory provision is to preclude the expenditure of Revenue Sharing funds where there is no appropriation of these funds within

the county budget. The problem is further compounded by said section 3 which prohibits further appropriations after the adoption of the county budget for the fiscal year.

Further, said section 4, supra, prohibits the county board, either directly or indirectly, to make any contract which adds to the county expenditures in any year, anything above the amount provided for in the county budget for that fiscal year.

In reviewing the provisions of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill", in order to determine what accounting or budgetary procedure may be utilized to expend the Federal Revenue Sharing funds, it is my opinion that said Act would not prohibit the substitution of the Revenue Sharing funds for county funds previously appropriated within the county budget. If such a practice were implemented, the county expenditures would remain at the amount provided for in the budget for the fiscal year and an appropriation exists so as to permit the incurring of the expense or obligation on behalf of the county.

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Furthermore, Revenue Sharing funds could be used where an appropriation is made and there are insufficient funds to meet the proposed expenditure.

Very truly yours,

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