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FILE NO. S-1269

**OFFICERS:**

Authority of a Circuit  
Clerk to Deduct a Collection  
Fee From Amounts Collected  
For a Municipality

Honorable Ronald C. Dozier  
State's Attorney  
McLean County  
McLean County Law and Justice Center  
104 West Front Street, Room 102  
Bloomington, Illinois 61701

Dear Mr. Dozier:

I have your letter wherein you inquire whether item (u) (1) of section 27.1 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1976 Supp., ch. 25, par. 27.1) authorizes the circuit clerk to deduct a fee from amounts collected for a municipality or whether item (w) of the same section prohibits the collection of such a fee. You also ask the following questions:

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- "1. If the circuit clerk of McLean County may not lawfully deduct 2% of the collections made for McLean County municipalities, either because §27.1(w) prevails or because §27.1 is unconstitutional under article 7, section 9 of the 1970 Illinois Constitution, (a) when did such withholding first become unlawful; and (b) must reimbursement of the withheld 2% be made to the municipalities involved and if so, from what date?
2. If the collection deduction is permissible under §27.1, is that section constitutional in light of article 7, section 9 of the Illinois Constitution of 1970?"

For the reasons hereinafter stated, it is my opinion that item (w) of section 27.1 prohibits the deduction of a fee from collections made by a circuit clerk for a municipality, and that the municipalities in question may recover all sums deducted from monies collected for them after October 1, 1973, the effective date of the provision which was the predecessor of item (w) of section 27.1. It is also my opinion that the 2% collection fee authorized by item (u)(1) of section 27.1 is not unconstitutional under section 9 of article VII of the Illinois Constitution of 1970.

Item (u)(1) of section 27.1 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1976 Supp., ch. 25, par. 27.1) provides as follows:

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"The fees of the Clerk of the Circuit Court \* \* \* shall be as follows:

\* \* \*

(u) Collections

(1) For all collections made for others, except the State and County and except in child support cases, a sum equal to 2% of the amount collected and turned over.

\* \* \*

"

Item (w) of the same section provides as follows:

"(w) No fee provided for herein shall be charged to any unit of State or local government or school district unless the Court orders another party to pay such fee on its behalf."

The former provision appears to permit fees to be deducted from sums collected for municipalities, but the latter provision clearly prohibits such deductions.

When two statutory provisions conflict, courts will give effect to the provision containing the larger or more extensive expression. (Patteson v. City of Peoria (1944), 386 Ill. 460, 463 to 464; People ex rel. Gasparas v. Village of Justice (1967), 88 Ill. App. 2d 227, 237; Retail Liquor Dealers Protective Association of Illinois v. Fleck (1950), 341 Ill. App. 283, 288.) Therefore, because item (w) of

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section 27.1 is a more extensive expression, that provision should control, and all units of State and local government and school districts should be exempt from the collection fee. Furthermore, the intention of the General Assembly in enacting the provision which became item (w) is clear because that provision was added later in time to the predecessor statute, was a positive repeal of part of that statute, and is clear in its statement that no fee under section 27.1 may be charged to any unit of local government unless a court orders another party to pay a fee on the unit's behalf.

There is no Illinois statutory or case law provision concerning the recovery of unlawfully paid or exacted fees. The general rule, however, is that any amount paid to a public officer or employee which is in excess of his lawful fee, may be recovered by the payor. (Yuma County v. Wisener (Ariz. 1935), 46 P.2d 115, 117 through 118; Taylor for Use and Benefit of Laurel County v. Jones (Ky. 1934), 69 S.W. 2d 372, 373; Tarrant County v. Rogers (Tex. Civ. App. 1910), 125 S.W. 592, 594; Lewis v. City and County of San Francisco (Cal. Ct. App. 1905), 82 P. 1106, 1108; Marcotte v. Allen (Me. 1897), 39 A. 346, 347.) Therefore, it appears

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that the municipalities in question may recover the fees unlawfully deducted by the circuit clerk.

Items (u) (1) and (w) of section 27.1 were drawn from section 14 of "AN ACT concerning fees and salaries, and to classify the several counties of this State with reference thereto". (Ill. Rev. Stat. 1975, ch. 53, par. 31, repealed by P.A. 79-1445, §5, eff. Sept. 29, 1976.) Item (s) of section 14 of that Act, from which item (u) (1) was drawn, was in effect prior to the enactment of Public Act 78-455, effective October 1, 1973, which added the language upon which item (w) was based. Thus, prior to October 1, 1973, there was no language in section 14 prohibiting the deduction of collection of fees from amounts collected for municipalities. Therefore, only those fees deducted after that date were illegally collected and may be recovered by the respective payors.

Clerks of the circuit courts are not subject to section 9 of article VII of the Illinois Constitution of 1970. (1973 Ill. Att'y. Gen. Op. 171.) Therefore, clerks of the circuit courts are not prohibited from collecting fees based upon funds collected and the fee provided by item (u) (1) is not unconstitutional under section 9.

Very truly yours,

A T T O R N E Y   G E N E R A L