



WILLIAM J. SCOTT
 ATTORNEY GENERAL
 STATE OF ILLINOIS
 500 SOUTH SECOND STREET
 SPRINGFIELD

August 18, 1977

FILE NO. S-1292

OFFICERS:
 Fees of the Circuit
 Court Clerk

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

Dear Mr. Fitzsimmons:

I have your letter concerning 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) which pro-
 vides in pertinent part as follows:

"The fees of the Clerk of the Circuit
 Court in all counties having a population of
 1,000,000 inhabitants or less shall be paid in
 advance, except as herein provided, and shall
 be as follows:

(b) Family

(4) Marriages in Court \$10

* * *

* * *

* * *

"

Honorable J. Michael Fitzsimmons - 2.

and Supreme Court Rule 40 (Ill. Rev. Stat. 1975, ch. 110A, par. 40) which provides in pertinent part as follows:

"(a) Creation. The Chief Judge of any judicial circuit may, by administrative order, establish a marriage division in any county in the circuit and specify the times and places at which those judges willing to perform marriages will normally be available to do so.

(b) Clerk — Fee. The Chief Judge may provide that the Clerk of the Circuit Court or someone designated by him shall attend each regular session of each marriage division to assist the judge assigned thereto. The Chief Judge may set a fee to be collected by the Clerk in an amount not to exceed \$10.00 for each marriage performed. No additional fee or gratuity will be solicited or accepted.

(c) Trust Account. The fees received shall be deposited in a bank account in the name of the 'Marriage Fund of the Circuit Court of _____ County.' The trustees of the account shall be three in number consisting of the Chief Judge, the administrative secretary to the Chief Judge, and a resident circuit judge of the county. If there is no administrative secretary to the Chief Judge, or if there is no resident circuit judge of the county, the Chief Judge shall designate one or two fellow circuit judges as his co-trustees. Money in a Marriage Fund may be spent in furtherance of the administration of justice. Payment of a reasonable per diem fee to the clerk, or person designated by him, who attends the marriage division on a day other than a regular working day may be made from the Fund.

(d) Audit — Excess Funds to County Treasurer. In December of each year, all marriage funds will be audited and a copy of the audit report will be

Honorable J. Michael Fitzsimmons - 3.

filed with the Chief Judge of the Circuit and with the Administrative Director of the Illinois Courts. On December 31 of each year, the trustees shall pay into the county General Fund such amounts as in their judgment may be appropriate.

* * *

"

In light of the inconsistency of the above provisions, you pose the following questions:

1. Where are fees collected by clerks of circuit courts to be deposited?
2. Are the clerks of the circuit courts officers of units of local government who are required by section 9(a) of article VII of the Illinois Constitution of 1970 to deposit their fees with the county treasurers?
3. Are the clerks of the circuit courts precluded from collecting a fee pursuant to 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) if the chief judge of the circuit in which they serve has allowed a fee pursuant to Supreme Court Rule 40?

In response to your first question, it is my opinion that fees collected by a clerk of the circuit court are to be deposited with the county treasurer. The deposit of fees collected by clerks of the circuit courts is governed by sections 1 and 2 of "AN ACT to provide for the timely deposit of fees, etc." (Ill. Rev. Stat. 1975, ch. 85, par. 721 and 722), which provide as follows:

Honorable J. Michael Fitzsimmons - 4.

"721. § 1. Legislative purpose). It is the legislative purpose of this Act to require deposit of all fees collected pursuant to law by officials of units of local government, elected or appointed, to comply with, and in implementation of Section 14 of Article VI and Section 9 of Article VII of the 1970 Constitution of the State of Illinois.

722. Deposit of fees upon receipt.] § 2. All elected or appointed officials of units of local government, and clerks of the circuit courts, authorized by law to collect fees which collection is not prohibited by Section 9 of Article VII of the Constitution, shall deposit all such collected fees upon receipt with the county treasurer or treasurer of such other unit of local government, as the case may be; except that such officials may maintain overpayments, tax redemptions, trust funds and special funds as provided for by law or local ordinance." (Emphasis added.)

The specific reference to clerks of the circuit courts and to section 14 of article VI of the Illinois Constitution of 1970 in the above provisions makes it clear that clerks of the circuit court are to be covered by the provisions of the Act and that all fees collected by them, with very limited exceptions, are to be deposited with the county treasurers.

In response to your second question, it is my opinion that clerks of the circuit courts are not subject to the provisions of section 9(a) of article VII of the Illinois Constitution of 1970. I have previously so advised

Honorable J. Michael Fitzsimmons - 5.

in opinion No. S-639. (1973 Ill. Att'y. Gen. Op. 171.)
Therefore, the requirement that clerks of the circuit courts deposit the fees which they collect with county treasurers is not rooted in section 9(a) of article VII but is rooted in statutory law. See Ill. Rev. Stat. 1975, ch. 85, par. 721 and 722.

In response to your third question, it is my opinion that, because 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) mandates collection by circuit clerks of a fee for marriages in court, Supreme Court Rule 40 is inoperative insofar as it authorizes the chief judges of the circuits to set a fee to be collected by the circuit clerks for marriages in court and provides for deposit of fees collected in a special marriage fund. When, as in this situation, a Supreme Court Rule and a statute are inconsistent, the statute takes precedence. The courts have the power to prescribe rules of practice and procedure which have the force and effect of law, but such rules must not be contrary to either the Constitution or the statutes. (People v. Davis (1934), 357 Ill. 396, 399; People v. Feinberg (1932), 348 Ill. 549, 556.) Rules of court which conflict with a

Honorable J. Michael Fitzsimmons - 6.

statute or statutes are invalid. (People v. Lindsay (1952), 412 Ill. 472, 486.) Therefore, since Supreme Court Rule 40 conflicts with both section 27.1 of "AN ACT to revise the law in relation to clerks of courts", and sections 1 and 2 of "AN ACT to provide for the timely deposit of fees, etc.", it is invalid, and clerks of the circuit courts should collect and dispose of the appropriate fee in accordance with the applicable statutory provisions.

Very truly yours,

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