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FILE NO. S-963

CONSTITUTION:
Meaning of the Word Fee

Honorable Gerry L. Dondanville
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Dear Mr. Dondanville:

I have your letter wherein you state that the county treasurer of Kane County is maintaining a special fund, composed of fines and forfeitures collected by the state's attorney of Kane County, pursuant to the provisions of section 3 of "AN ACT fixing and providing for the payment of the salaries of state's attorneys and their assistants, defining their duties, providing for the appointment of assistants, and to provide for the collection and disposition

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of fees, fines, forfeitures and penalties provided by law to be paid to the state's attorney, and to repeal all acts in conflict herewith" (Ill. Rev. Stat. 1973, ch. 53, par. 18a) [hereinafter referred to as the State's Attorneys Salaries Act]. Said section 3 reads as follows:

"§ 3. It shall be the duty of State's Attorneys to attend to the collection of all fines and forfeitures in criminal cases, and they shall, without delay, pay over all fines and forfeitures collected by them to the county treasurer in order that a fund may be thereby provided from which the salary of the State's Attorney and compensation of assistants contemplated by this act be paid, and the said funds in the hands of the county treasurer shall be used for the payment of the salary and compensation aforesaid as far as it will go toward such payment."

Section 4 of the State's Attorneys Salaries Act

(Ill. Rev. Stat. 1973, ch. 53, par. 19) provides as follows:

"§ 4. The salaries of the State's Attorneys, excepting that part which is to be paid out of the state treasury as now provided for by law, shall be paid out of the county treasury of the county in which the State's Attorney resides, in quarterly annual installments on the order of the county board on the treasurer of the county: The fees which are now, or may hereafter, be provided by law to be paid by the defendant or defendants, as State's Attorney's fees, shall be taxed as costs and all fees,

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finer, forfeitures and penalties shall be collected by the State's Attorney, and shall be paid by him direct into the county treasury. Such fund shall be held as a special fund to be paid out and distributed as follows: The salaries of the State's Attorneys and all Assistant State's Attorneys, or so much thereof as the fund will meet, the balance of such salaries, if any, to be paid by the county as herein otherwise provided. On July 1st of each year, the county treasurer shall, if there remain in the fund after paying salaries then due the lawful employees of the State's Attorney's office and other legal expenses, of the State's Attorney's office, and a sum sufficient to pay one quarterly payment of such salaries, and a balance, transfer such balance into the general corporate fund of the county. The county treasurer shall receipt therefor." (emphasis added.)

Sections 3 and 4 of the State's Attorneys Salaries Act were originally enacted by the General Assembly in 1929. H.B. 526; Laws of 1929, p. 474.

I am of the opinion that the special fund referred to in section 4 is the same fund authorized by section 3. Therefore, sections 3 and 4 authorize the county treasurer to maintain a special fund composed of fees, fines, forfeitures and penalties.

You point out in your letter that the county treasurer of Kane County is maintaining a special fund composed only of fines and forfeitures. All fees are turned over by the county treasurer of Kane County into the general fund of the county.

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You inquire as to whether the establishment of such a special fund composed strictly of fines and forfeitures for the purposes described in section 3 violates section 9(a) of article VII of the Illinois Constitution of 1970. Said section 9(a) reads as follows:

"(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."

Section 9(a) forbids the use of fees to directly compensate officers and employees of units of local government. Section 3 of the State's Attorneys Salaries Act provides that fines and forfeitures in criminal cases collected by the state's attorney shall be turned over to the county treasurer who shall keep these monies in a special fund to be used for compensating the state's attorney and his assistants. The issue to be resolved is whether the word "fees" as used in section 9(a) encompasses "fines" and "forfeitures".

Section 9(a) of article VII had its origin as section 9 of the majority proposal of the Committee on Local Government.

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(VII Committee Proposals 1567, 1584.) The Committee explained the object and purpose of its proposal as primarily intending to eliminate the sundry bank accounts which officers of units of local governments, particular county officers, were allowed to maintain for their fee depositories under the Illinois Constitution of 1870. Instead the treasurer of the unit involved would now be in receipt of all fees collected by the various officers. Under the Illinois Constitution of 1870, officers of units of local government, particular county officers, were empowered to compensate themselves, their employees and pay for their office expenses from the fees they collected. See, Ill. Const., art. X, secs. 9, 10, 11, 12 and 13 [1870].

The reasons for recommending the separation of fees from the compensation of officers was described by the Committee at page 146 of its report:

"The first sentence of Section 9 completes a process begun in the 1870 constitution, i.e., bringing the compensation of officers, particularly county and township officers, under full legislative control at either the state or local level. The five sections of the 1870 constitution governing fees and compensation require specified Cook County officers to receive only salaries to be fixed by law, authorize county boards to fix the compensation of other county officers within

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limitations prescribed by law, and limit fees of state, county and township officers to reasonable fees provided by general law. These five sections contemplate, however, that fees will continue to be the basis of compensation of many officers and limit the compensation of some county officers to fees collected. This system in which fees and compensation are still somewhat intertwined is productive of continuing confusion. It blurs the responsibility of legislative bodies to determine the appropriate compensation for local officers. The limit on some officers' compensation to fees collected is a artificially low limit in some cases--coroners have been cited as an example--that prevents fair compensation and inhibits the ability to attract competent men to important posts. The committee believes that to solve these problems, fees should be severed entirely from the compensation of officers, leaving the matter of compensation to be regulated by state and local legislatures in accord with other provisions of this Article." (VII Committee Proposals 1720, 1721.)

In presenting the proposal to the Convention as a whole, Delegate Don Zeglis, a member of the Committee on Local Government, indicated that the word "fees" did not encompass fines.

MR. CAREY: Now, with respect to fines collected in the Circuit Court of Cook County, the clerk of the circuit court turns them over to the city treasurer where they ultimately belong. What would be the result of the adoption of this amendment with respect to that procedure?

MR. ZEGLIS: Well, in my opinion, he would have to do it daily, and not every six months as it's being done now.

MR. CAREY: To whom would he turn them over?

MR. ZEGLIS: To the county treasurer or the city treasurer, if it was a city ordinance in violation.

MR. CAREY: Yes, that is what I am talking about.

MR. ZEGLIS: He would pay it to the city treasurer.

MR. CAREY: Daily?

MR. ZEGLIS: Daily.

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MR. CAREY: The clerk of the court would do it?

MR. ZEGLIS: The clerk. That is my opinion anyway; I could be wrong.

MR. CAREY: If it were a county ordinance being violated, he would turn it over to the county treasurer?

MR. ZEGLIS: That's the way I look at it. The purpose would be to abolish the multiple bank accounts all over your county.

MR. CAREY: But with respect to city fines, the clerk of the court wouldn't have to turn it over to the county treasurer, and then have the county treasurer turn it over to the city treasurer?

MR. ZEGLIS: No, no.

MR. CAREY: Thank you.

VICE-PRESIDENT SMITH: Thank you, Delegate Carey. Delegate Elward?

MR. ELWARD: Pursuing that last line of questioning, what about the payment of fines to the suburban communities in Cook County? The circuit court clerk now pays those over on a fairly frequent basis, as I understand it, and makes distribution. Is it contemplated that the fines would have to be paid from the circuit court clerk into the county treasury and then back out to the suburban communities? Because, if so, I think there is going to be a loss of time in getting this money from traffic fines and so on out there.

MR. ZEGLIS: No, I believe I am wrong there. It's only fees that we have in mind, not the fines.

MR. ELWARD: Not fines.

MR. ZEGLIS: Just the fees.

MR. ELWARD: Because this fine money paid by the clerk of the circuit court now to the suburban communities is a substantial source of suburban community revenue, and while it wouldn't affect me in the city, I know Evanston and the communities near my district would be very much upset if that pattern were going to be changed.

MR. ZEGLIS: We are just talking about fees."

(IV Verbatim Transcripts 3407.)

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The word "fee" is defined in Webster's Third New International Dictionary as:

"[A] charge fixed by law for the services of a public officer."

Black's Law Dictionary (4th Ed.) defines the word "fee" as follows:

"A charge fixed by law for services of public officers or for use of a privilege under control of government. Fort Smith Gas Co. v. Wiseman, 189 Ark. 675, 74 S.W. 2d 789, 790. A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. Craig v. Shelton, 201 Ky. 790, 258 S.W. 694. A fixed charge or perquisite charged as recompense for labor and trouble, a reward, compensation, or wage given to a person for performance of professional services or something done or to be done. People v. Goulding, 275 Mich. 353, 266 N.W. 378, 379."

As a general rule, the word "fine" has a reference to a pecuniary punishment for a criminal offense. (1914 Ill. Att'y. Gen. Op. 311.) Webster's Third New International Dictionary defines the word "fine" as:

"[A] sum formerly paid as compensation or for exemption from punishment but now imposed as punishment for a crime--"

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Black's Law Dictionary (4th Ed.) defines the word

"fine" as follows:

"A pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. In re Chester School District's Audit, 301 Pa. 203, 151 A. 801, 808. A pecuniary penalty. Hanks v. Shreveport Yellow Cabs, La. App., 187 So. 817, 819."

The word "fine" is used in the Unified Code of Corrections to refer to a type of sentence that may be imposed upon a person convicted of a criminal offense. Section 1005-9-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1005-9-1) indicates clearly that a fine is a pecuniary punishment imposed upon an offender.

Webster's Third New International Dictionary defines the word "forfeiture" as:

"[T]he divesting of the ownership of particular property of a person on account of the breach of a legal duty and without any compensation to him: the loss of property or money on account of one's breach of the terms of an agreement, bond, or other legal obligation b; loss of some right, privilege, estate, honor, office, or effects in consequence of a crime, offense, breach of condition, or other act."

Black's Law Dictionary (4th Ed.) defines the word

"forfeiture" as follows:

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"Something to which the right is lost by the commission of a crime or fault or the losing of something by way of penalty. *Ridgeway v. City of Akron*, Ohio App., 42 N.E. 2d 724, 726. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. *Connellan v. Federal Life & Casualty Co.*, 134 Me. 104, 182 A. 13, 14."

Section 3 of the State's Attorneys Salaries Act requires the state's attorney to turn over to the county treasurer forfeitures he has collected in criminal cases. Forfeitures in this context obviously include and refer to bail bond forfeitures. Ill. Rev. Stat. 1973, ch. 38, pars. 110-7, 110-8(g) and (h).

The Constitution should be read and understood according to the most natural and obvious import of the language used. As stated by the Illinois Supreme Court in People v. Stevenson, 281 Ill. 17, at page 26:

"* * * The intention to which force is given in construing constitutional provisions is that which is embodied and expressed in the language of the provisions. As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution, unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention. * * *" (See, also, Locust Grove

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Cemetery Ass'n. v. Rose, 16 Ill. 2d 132, 139; Rosen v. Rosen, 370 Ill. 173, 174; Graham v. Dye, 308 Ill. 283, 286; Wulff v. Adlrich, 124 Ill. 591, 598; Wilcox v. People ex rel. Lipe, 90 Ill. 186, 196; In re Estate of Trapani, 21 Ill. App. 2d 19, 31.)

Section 9(a) of article VII and particularly the word "fees" should be understood in the sense most obvious to common understanding. This same principle of construction applies to statutes. Thus, sections 3 and 4 of the State's Attorneys Salaries Act (Ill. Rev. Stat. 1973, ch. 53, pars. 18a and 19) and particularly the words "fines" and "forfeitures" should be understood in the sense most obvious to common understanding. I am of the opinion that the word "fees" as used in section 9(a) of article VII of the Illinois Constitution of 1970 refers to a charge fixed by law or ordinance for the rendering of services by a public officer. As such the word "fees" does not encompass "fines" or "forfeitures". The ordinary meaning of the word "fines" is a pecuniary punishment for the commission of a criminal offense. "Forfeitures" ordinarily refers to the divestiture of specific property without compensation in consequence of some default or act forbidden by law.

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In answer to your inquiry, I am of the opinion that the establishment of a "special fund", composed entirely of fines and forfeitures, pursuant to the provisions of section 3 of the State's Attorneys Salaries Act (Ill. Rev. Stat. 1973, ch. 53, par. 18a) is not violative of section 9(a) of article VII of the Illinois Constitution of 1970.

This opinion is not to be construed as commenting on whether the state's attorney is an officer of a unit of local government.

Very truly yours,

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