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***Questions***

Can a county clerk give raises to employees that are in excess of what was previously discussed during budget meetings after a county budget is finalized?

Can a county clerk pay personnel costs, including raises, out of fee funds?

Can a county board control the spending practices of a county-wide elected official by moving the line items for certain expenditures to the county's general fund?

***Analysis***

“It is well established that a county, acting through the county board, can exercise only those powers expressly delegated by article VII, section 7 of the 1970 Illinois Constitution or by the General Assembly or those powers which arise by necessary implication therefrom.” Ill. Att’y Gen. Op. No. 84-003 (citations omitted). Section 6-1001 of the Counties Code authorizes the county board to adopt the county’s budget.<sup>1</sup> Section 6-1002 requires the county board to make a detailed itemization of estimated expenditures and appropriations for the pertinent fiscal year.<sup>2</sup> These statutes “grant the county board the power to determine the amount of county funds which are to be expended and the purpose for which the funds are to be expended. However, this power is not absolute and unlimited; the power to manage the county funds and the county business is limited to that which is not otherwise specifically provided for by law and must be exercised in accordance with other statutory provisions.”<sup>3</sup> As will be discussed below, other statutory provisions operate to restrict the county board’s power in the budgetary process.

Section 3-2003.5 of the Counties Code provides one such restriction upon the county board’s authority with respect to the office of the county clerk. Specifically, that section provides that

<sup>1</sup> 55 ILCS 5/6-1001.

<sup>2</sup> 55 ILCS 5/6-1002

<sup>3</sup> Ill. Att’y Gen. Op. No. 84-003

“[c]ompensation of deputies and employees shall be fixed by the county clerk subject to budgetary limitations established by the county board.”<sup>4</sup> Despite this budgetary limitation, “[t]he General Assembly has conferred upon the \* \* \* the county clerk \* \* \* the power to control the internal operations of their respective offices”<sup>5</sup>, including the right “to procure necessary equipment, materials and services to perform the duties of the clerk’s office.”<sup>6</sup> The Illinois Attorney General has opined that this control over certain county officers, such as the county clerk, “is limited to the appropriation of aggregate or lump-sum dollar amounts for the necessary equipment, materials, and services required by the [county clerk].”<sup>7</sup> “[T]he county board may not limit the expenditures of an officer within one of the three delineated classifications as long as the amount of the appropriation for the classification has not been exceeded.”<sup>8</sup> “[W]hile the county board has the power to determine the amount of county funds that may be expended, the county board cannot use its financial and budgetary powers to regulate, control, or otherwise interfere in the internal operations of the various county offices.”<sup>9</sup> Though the power of the county clerk relating to the expenditure of county funds is subject to the budget adopted by the county board, if the county clerk provides raises but does not exceed the amount in the budget for services, the county board cannot prevent this. The county board can attempt to prevent excessive raises in the future by not authorizing a budget containing a sum for personnel that allows the county clerk to do so.

Additionally, you have asked whether the county clerk can use fee funds to pay the salary increases or whether this is prohibited by the Illinois Constitution, which states that “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.”<sup>10</sup> This “Section 9(a) ameliorated problems of the fee office by requiring salaries and expenses to be independent of collected fees and by requiring that collected fees be deposited upon receipt with the Treasurer. The [county officers] relinquished control of the collected fees, accounts were centralized, and the authority for payment of expenses rested with the purchasing and appropriation authority of the local government.”<sup>11</sup>

Section 4-4001 of the Counties Code sets forth the fees that the county clerk in counties of the first and second class may charge.<sup>12</sup> The county clerk is required to deposit all fee income in the office of the county treasurer by the 10th day of the following month.<sup>13</sup> Moreover, the traditional fee

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<sup>4</sup> 55 ILCS 5/3-2003.5

<sup>5</sup> Ill. Att’y Gen. Op. No. 84-003; see also 55 ILCS 5/3-2003.2 (providing that the “county clerk shall have the right to control the internal operations of the clerk’s office and to procure necessary equipment, materials and services to perform the duties of the clerk’s office.”).

<sup>6</sup> 55 ILCS 5/3-2003.2

<sup>7</sup> Ill. Att’y Gen. Op. 84-003, p.1.

<sup>8</sup> Ill. Att’y Gen. Op. 84-003, p.1.

<sup>9</sup> Ill. Att’y Gen. Op. 84-003

<sup>10</sup> Ill. Const. art. VII, § 9(a)

<sup>11</sup> Gadeikis v. Yourell, 169 Ill. App. 3d 1033, 1035 (1st Dist. 1988), citing 7 Proceedings of the Sixth Constitutional Convention 1720–25.

<sup>12</sup> 55 ILCS 5/4-4001

<sup>13</sup> 55 ILCS 5/3-2003.4

schedule for the Recorder is set forth in Section 3-5018.<sup>14</sup> The recorder is likewise required to deposit all fee income in the office of the county treasurer by the 10th day of the following month.<sup>15</sup> Additionally, the county clerk and recorder may maintain the following special funds from which the county board shall authorize payments by voucher between board meetings: (a) Overpayments; (b) Reasonable amount needed during the succeeding accounting period to pay office expenses, postage, freight, express or similar charges; (c) Excess earnings from the sale of revenue stamps to be maintained in a fund to be used for the purchase of additional stamps from the Illinois Department of Revenue; (d) Fund to pay necessary travel, dues and other expenses incurred in attending workshops, educational seminars and organizational meetings established for the purpose of providing in-service training; (e) Trust funds, for tax redemptions, or for such other purposes as may be provided for by law; and (f) Such other funds as may be authorized by the county board.<sup>16</sup>

The Attorney General has opined on the permissibility of paying personnel costs from the proceeds of certain fees collected by a county clerk. Section 4-4001 provides, in pertinent part:

The county board of any county of the first or second class may by ordinance authorize the county clerk to impose an additional \$2 charge for certified copies of vital records as defined in Section 1 of the Vital Records Act, for the purpose of developing, maintaining, and improving technology in the office of the County Clerk.

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The county board of any county of the first or second class may by ordinance authorize the county treasurer to establish a special fund for deposit of the additional charge. Moneys in the special fund shall be used solely to provide the equipment, material and necessary expenses incurred to help defray the cost of implementing and maintaining such document storage system.<sup>17</sup>

The Attorney General pointed out that “Section 4–4001 of the Code clearly authorizes the imposition of a fee to be used ‘for the sole purpose of defraying the cost of converting the county clerk’s document storage system for vital records \*\*\* to computers or micrographics \*\*\*.’”<sup>18</sup> Ultimately, the Attorney General concluded that “the use of the proceeds of the specified fees is limited to the specific purposes for which the fees are imposed. Therefore, the proceeds are not available for compensating data entry personnel for entering data into systems other than those to which each fee relates, or for performing acts which are not in furtherance of the specified statutory purpose. Consequently, if a data entry employee provides services other than those which are

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<sup>14</sup> 55 ILCS 5/3-5018.

<sup>15</sup> 55 ILCS 5/3-5005.4

<sup>16</sup> 55 ILCS 5/3-2003.4 (county clerk); 55 ILCS 5/3-5005.4 (recorder).

<sup>17</sup> 55 ILCS 5/4-4001.

<sup>18</sup> Ill. Att’y Gen. Op. 92-008, at \*5 (Apr. 22, 1992)

compensable from the proceeds of the fees in question, the portion of the employee's compensation representing time expended in other activities must be paid from other funding sources."<sup>19</sup>

Where fees are collected pursuant to a statute that directs the deposit of the proceeds from that fee with the county treasurer, there is no violation of Section 9(a) of the Illinois Constitution.<sup>20</sup> Moreover, public officers are further insulated from a constitutional violation where the statute that provides for the fee also directs how the county can spend the proceeds.<sup>21</sup>

### ***Conclusion***

1. The county clerk may give raises in its discretion so long as the necessary funds to do so are within the amount(s) previously appropriated. There may be consequences for doing so in other contexts, such as collective bargaining or labor disputes or less money in the budget for other expenditures.
2. Special funds established by statute or ordinances must be utilized consistent with the statute or ordinance create the fund or underlying fee – including using them for a proper purpose and following the procedures contained in the ordinance or statute. A county clerk cannot exceed the total appropriation made by the county board from a special or fee fund for expenditures of the office of the county clerk.
3. The County Board cannot use its annual budget or appropriation ordinance and the line items contained therein to indirectly interfere with the internal operations of the office of a county-wide elected official.

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<sup>19</sup> Ill. Att'y Gen. Op. 92-008, at \*5 (Apr. 22, 1992)

<sup>20</sup> See Marks v. Vanderverter, 2015 IL 116226, ¶ 15 (“Thus, the recorder acts merely as a conduit to the county treasurer, which is not a violation of the fee office prohibition”); see also Gadeikis v. Yourell, 169 Ill. App. 3d 1033, 1035 (1st Dist. 1988) (“Fees collected by the Recorder are deposited into the general fund, where they are accounted for, and are used to pay salaries and office expenses. Since the payment of salaries and expenses from the general fund, which consists in part of fees collected, is constitutional, it cannot be said that payment of an office expense from a special fund consisting of money from the general fund is unconstitutional.”).

<sup>21</sup> *Id.*

At the request and direction of UCCI this summary was prepared by

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