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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 17, 1971

FILE NO. S-377

FEES AND SALARIES
State's Attorney

Honorable Jack Hoogasian
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have your recent letter wherein you state:

"Your opinion is requested in respect to fees collectable by the State's Attorney as scheduled under Chapter 53, Section 8 and Chapter 95 1/2, Section 235. In respect to the fees listed under Section 8 of Chapter 53, our Clerk informs me that it is my duty to list the accounting as to the costs owed the State's Attorney by the party prosecuted. Please advise the procedures for her clarification in the collection of the State's Attorneys fees.

"In respect to Section 235 of Chapter 95 1/2, as I read the Statute, it is my impression

that we are entitled to 10% of the fines in traffic cases as described in that section. Please advise whether the Clerk of the Circuit Court can withhold for my office 10% of all fines collected."

In your first question you have asked whether it is the duty of the State's Attorney to list the accounting of the fees owed to the State's Attorney by the party prosecuted under any of the provisions of Paragraph 8 of Chapter 53, 1969 Illinois Revised Statutes. I find no statutory provision or common law duty which requires the State's Attorney to list such an accounting. The duties of a constitutional officer must be found either at common law or in a statute, People ex rel Walsh v. Board of Commissioners, 397 Ill. 293, Perkins v. Board of Commissioners, 271 Ill. 449.

Secondly, you have asked whether the office of the State's Attorney is entitled to 10% of the fines in traffic cases as described in Paragraph 235 of Chapter 95 1/2, 1969 Illinois Revised Statutes. Section 16-105 of Chapter 95 1/2 of the 1971 Smith-Hurd Illinois Annotated Statutes (formerly Paragraph 235 of Chapter 95 1/2, 1969 Illinois Revised Statutes) reads as follows:

"(a) Fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Act shall be paid and used as follows:

"1. For offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, to the treasurer of the particular city, village, incorporated town or park district, if the violator was arrested by the authorities of the city, village, incorporated town or park district, provided the police officers and officials of cities, villages, incorporated towns and park districts shall seasonable prosecute for all fines and penalties under this Act. If the violation is prosecuted by the authorities of the county, any fines or penalties recovered shall be paid to the county treasurer. Provided further that if the violator was arrested by the State Police, fines and penalties recovered under the provisions of Section 15-113 of this Chapter shall be paid over to the Department of Law Enforcement which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer who shall deposit the amount so remitted in the special fund in the State treasury known as the Road Fund except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to the Department of Law Enforcement for remittance to and deposit by the State Treasurer as hereinabove provided.

"2. For offenses committed upon any highway outside the limits of a city, village, incorporated town or park district, to the county treasurer of the county where the offense was committed except if such offense was committed on a highway maintained by or under the supervision of a township,

township district, or a road district to the Treasurer thereof for deposit in the road and bridge fund of such township or other district; Provided, that fines and penalties recovered under the provisions of Section 15-113 of this Act shall be paid over to the Department of Law Enforcement which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer who shall deposit the amount so remitted in the special fund in the State treasury known as the Road Fund except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to the Department of Law Enforcement for remittance to and deposit by the State Treasurer as hereinabove provided.

"(b) Failure, refusal or neglect on the part of any judicial or other officer or employee receiving or having custody of any such fine or forfeiture either before or after a deposit with the proper official as defined in paragraph (a) of this Section, shall constitute misconduct in office and shall be grounds for removal therefrom."

It can be observed from the foregoing statutory provision that the State's Attorney is entitled, as a fee of his office, to 10% of fines and penalties recovered under the provisions of Section 15-113 of the 1971 Smith-Hurd Illinois Annotated Statutes (overweight provisions) in those instances where the violation is prosecuted by the State's Attorney. The term "prosecute" has been

defined as the institution and carrying on of a suit or proceeding in a court of law or equity to obtain or enforce some right or to redress and punish some wrong; the carrying on of a judicial proceeding, on behalf of a complaining party, O'Dea v. Throm, 332 Ill. 89 at p. 91. It should be noted that the term "prosecute", when referring to the State's Attorney does not have the same meaning when referring to prosecution by police officers and officials as used elsewhere in Section 16-105 of Chapter 95 1/2. See City of Champaign v. Hill, 29 Ill. App. 2d 429.

In conclusion, I am of the opinion that the State's Attorney is entitled, as a fee of his office, to 10% of fines and penalties recovered under the provisions of Section 15-113 of the 1971 Smith-Hurd Illinois Annotated Statutes in those instances where the State's Attorney initiates and conducts the court proceeding.

Very truly yours,

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