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SPRINGFIELD

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FILE NO. S-347

FEES AND SALARIES:
Counties

Honorable William V. Hopf
State's Attorney
Du Page County
Wheaton, Illinois 60187

Dear Mr. Hopf:

I have your recent letter wherein you state:

"Under the provisions of the New Constitution, there is to be no fee collected by the County Collector for the collection and distribution of taxes on behalf of the numerous taxing districts within his jurisdiction. Presently I would assume that the expense of this collection is to be borne solely by the County Government."

"Would it be within the power of the County Governments to negotiate with and enter into a contract with these various taxing districts to defray the costs of collection and distribution of their taxes."

As you undoubtedly know, Paragraph 39 of Chapter 53, 1969 Illinois Revised Statutes provides as follows:

"County collectors shall be allowed a commission on all money collected by them and paid to the proper officer, of 3% in counties of the first and second class; of 1 1/2% in counties of the third class, excepting on all monies said county collectors collect for incorporated cities, villages and other municipalities in counties under township organization, upon which said county collectors shall be allowed a commission of 1% on all moneys collected by them for such cities and paid over by them to the proper officer; and excepting further, in counties having adopted township organization, county collectors shall be allowed on moneys paid over to them by township collectors, as commission on such moneys in counties of first class, only 1 1/2%, in counties of second class 1%, and in counties of third class, only 3/4 of 1%.* * *"

The foregoing provision which allows county collectors a fee based upon the amount of money collected by them is in conflict with sub-section (a) of Section 9 of Article VII of the 1970 Illinois Constitution which 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. (This Section 9 (a) of Article VII shall become effective on December 1, 1971. See Transition Schedule Section 1 (b).]"

The Constitution of Illinois is the supreme law of the State, Sutter v. People's Gaslight & Coke Co., 284 Ill. 634. It can be abrogated only by the sovereignty which created it, People ex rel Decatur & S. L. Ry. Co. v. McRoberts, 62 Ill. 38. The provision of Paragraph 39 of Chapter 53, 1969 Illinois Revised Statutes which allows a county collector a fee based on the amount of money collected by him will become invalid when Section 9 (a) of Article VII becomes effective.

The effective date of Article VII, Section 9 (a) was delayed by the Constitutional Convention, in Section 1 (b) of the Transition Schedule, to December 1, 1971.

You have inquired as to whether it is within the power of the county governments to negotiate with and enter into a contract with these various taxing districts to defray the costs of collection and distribution of their taxes. Although Article VII, Section 10 of the Illinois Constitution of 1970 permits units of local government to contract among themselves, section 176 of the Revenue Act of 1939

Honorable William V. Hopf -4-

(Ill. Rev. Stat. 1970 Supp., ch. 120, par. 657) makes it the duty of a county treasurer to be ex-officio county collector of their respective counties. In Illinois, a county acts as fiscal agent of the State in collecting taxes for all of its various political subdivisions, People ex rel Abbe v. Nash, 364 Ill. 224. It is my opinion such a contract would be improper as contrary to the spirit and intent of Article VII, Section 9 of the Illinois Constitution of 1970.

Very truly yours,

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