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COUNTIES:

County Law Library

Honorable Philip G. Reinhard
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Courthouse Building - Suite 619
Rockford, Illinois 61101

Dear Mr. Reinhard:

I have your letter wherein you ask the following questions:

- "A. Pursuant to its authority to 'establish and maintain a County Law Library,' may the County Board create the position of Law Library Librarian?
- B. Pursuant to its authority to order disbursement from the Law Library Fund, may the majority of the Circuit Judges create the position of Law Library Librarian?
- C. If either, or both, of the above have authority to create such position, who would have authority to hire the person to fill the position and to determine the amount of compensation to be paid?

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- D. May the compensation of the librarian be paid from funds presently held in the Law Library Fund? Also, may General County Funds be used to pay such compensation either wholly or in part?
- E. Would such person hired as the Law Librarian be considered as a County employee for retirement benefit, group insurance, etc. purposes?
- F. May General County Funds be expended for any purpose in conjunction with equipping, maintaining or operating a County law library; such as, purchase of books, equipment (tables, chairs, bookcases, etc.), or defraying fixed expenses (rent, utilities, etc.)? May funds of the County Law Library Fund be used for such purposes?
- G. Taking into consideration the amendment to the language of the second sentence of paragraph 3 of the Act, is a \$1.00 Law Library Fee payable to the Circuit Clerk by all parties in Civil law suits, including defendants, or is the collection limited to \$1.00 per case as stated by the Court in construing the previous language of Paragraph 3 in Moseid vs. McDonough, 1968, 103 Ill. App. 2d 23, 243 N.E. 2d 394.
- H. Is the Law Library Fee chargeable by the Circuit Clerk against all parties to a small claims civil law suit?"

Section 1 of AN ACT in relation to the establishment, maintenance and operation of county law libraries (Ill.

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Rev. Stat., 1971, ch. 81, par. 81) [hereinafter referred to as the County Law Library Act] provides as follows:

"The county board of any county may establish and maintain a county law library, to be located in any county building at the county seat of government. The term 'county building' includes premises leased by the county from a public building commission created pursuant to the Public Building Commission Act, approved July 5, 1955, as amended.

The facilities of such library shall be freely available to all licensed Illinois attorneys, judges and other public officers of such county, and to all members of the public, whenever the court house is open.

The expense of establishing and maintaining such library shall be borne by the county. To defray such expense, in any county having so established such a county law library, the clerks of all trial courts located at the county seat of government shall charge and collect a county law library fee of \$1, such fee to be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases, but no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance.

Each such clerk shall commence such charges and collections upon receipt of written notice from the chairman of such county board that the board has acted under the provisions of this Act to establish and maintain such a law library.

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Such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and shall be remitted by such clerks monthly to the county treasurer, and retained by him in a special fund designated as the County Law Library Fund. Disbursements from such fund shall be by the county treasurer, on order of a majority of the judges of the circuit court of such county, except that in any county having a population of more than 500,000 inhabitants, the county board shall order disbursements from such fund and such county board may appoint a library committee of not less than 9 members, who, by majority vote, may recommend to such county board as to disbursements of such fund and the operation of such library. Such orders shall be pre-audited and such funds shall be audited by the county auditor, and report thereof rendered to the county board and to the judges.

Such fees shall not be charged in any criminal or quasi-criminal case, in any matter coming to any such clerk on change of venue, nor in any proceeding to review the decision of any administrative officer, agency or body."

Winnebago County is a non-home rule county and has a population less than 500,000 persons.

Counties which are not home rule units have only the powers granted to them by the constitution (Ill. Const., Art. VII, sec. 7) and those powers expressly granted to them

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by statute, plus such implied powers as are necessary to carry out their express powers. (Goodwine v. County of Vermilion, 271 Ill. 126; Heidenreich v. Ronske, 26 Ill. 2d 360). Powers of a county are exercised by the county board. (Ill. Rev. Stat., 1971, ch. 34, par. 302). It is elementary that the county board members themselves could not possibly perform all of the duties and exercise all the powers of the county. Simply stated, it is necessary that the county board hire employees to aid in the execution of the county's powers. People ex rel. Faulstich v. McBrien, 311 Ill. App. 653.

In Donlevy v. Sims, 175 Ill. App. 290, the Illinois Appellate Court, Second District, held that pursuant to the county board's statutory power to inspect, examine and audit the records and fee books of any county officer, paid in whole or in part by fees, and to correct the accounts, and providing for a penalty for refusal or failure to permit county boards or anyone authorized by them to have free access to such books (Ill. Rev. Stat., 1912, ch. 53, par. 52), the county board has the implied power to hire an expert accountant to aid the county board in the performance of its statutory power.

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In Donlevy, the court, at page 294, explained its holding as follows:

"* * * Appellants contend that all fee books, papers, vouchers and reports which bear upon the amount that any county officer has received, or paid out, must be brought into public meeting of the county board, and that the board must sit in session, and as a whole must examine each paper and each item necessary to be investigated; and that all the work of determining that a true account has been rendered, must be performed in open sessions of the board. Manifestly, this is practically impossible. It would require the expenditure of time which members of the county board can not afford to give. It even involves matters of bookkeeping, and the adding of many columns of figures, and many members of a county board have not had the training that fits them to perform such work rapidly and correctly. If it was the purpose of this contract to have Sims determine the arrears that make a conclusive decision on the subject, and settle with the county officers by that conclusion alone, undoubtedly that would be beyond the power of the board. It would be depriving the board of power which they must exercise, but no reason is seen why the board cannot employ an expert accountant to go over the books, reports and papers, and even make other investigations to search for hidden or omitted items, and to make full report thereof to the board; and then the board can investigate those things which require their attention, and then determine what action shall be taken. No other conclusion than this would be reasonable or sensible.

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See, also, Melluish v. City of Alton, 230 Ill. App. 250; People ex rel. Jacobs v. Coffin, 282 Ill. 599; Ward v. City of DuQuoin, 173 Ill. App. 515; 8 I.L.P., Cities, Villages and other Municipal Corporations, sec. 193 (1954); 14 I.L.P., Counties, sec. 18 (1968).

Counties have been expressly granted the power to "establish and maintain" a county law library. Incidental to this express power the county board may employ a librarian to aid the county board in maintaining the library.

The County Law Library Act (Ill. Rev. Stat., 1971, ch. 81, par. 81) provides that once a county establishes a law library the clerks of all trial courts located at the county seat shall charge and collect a county law library fee of \$1. such fee to be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases. The clerks are to turn over these fees to the county treasurer.

With regard to counties of 500,000 persons or less, disbursements may be made from the county law library fund only

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on the order of a majority of the judges of the circuit court of such county. The judges of the circuit court have no express authority to hire a librarian for the county law library. Nor can it be said that incidental to their power to order disbursements from the county law library fund the judges have the implied authority to hire a librarian. If the legislature had intended to vest the judges with this power, it would have been a simple matter for them to express their intent. Instead, the legislature has given the judges only the authority to control disbursements from the fund.

It is a cardinal rule of statutory construction that a statute should be construed so as to ascertain the intention of the legislature. (Lincoln Natl. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489). In construing a statute to ascertain the intention of the General Assembly, the statute should be construed as a whole or in its entirety (Pliakos v. Illinois Liquor Control Commission, 11 Ill. 2d 456) and the legislative intent gathered from the entire statute rather than from any one part thereof. (Ill. Bell Telephone Co. v. Ames, 364 Ill. 362). All parts, provisions or sections of a statute must be

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read, considered or construed together (Concrete Materials Corp. v. Gordon, 395 Ill. 203) in light of the general purpose and object of the statute (People ex rel. Nelson v. Olympic Hotel Building Corp., 405 Ill. 440) so as to make it harmonious and consistent in all its parts and to give effect, if possible, to all such parts. Sternberg Dredging Co. v. Estate of Sternberg, 10 Ill. 2d 328.

Thus in construing that part of the County Law Library Act that authorizes judges to make disbursements from the fund we must keep in mind that the county board has the authority to establish and maintain the library. Obviously, if the county board were to request the judges to authorize the expenditure of monies from the fund, the judges would have the discretion to approve or disapprove the county board request. Implicit in this power to approve or disapprove requests for county law library fund expenditures is the power to approve or disapprove the reason for the expenditure.

The County Law Library Act clearly provides that the expense of establishing and maintaining the county law library

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shall be borne by the county. To be sure, monies collected from the county law library fund are to be used to defray the expenses of establishing and maintaining a county law library. However, these monies are not the only monies that the county can expend. The county board may authorize the expenditure of monies from the county general fund for the purpose of establishing and maintaining a county law library. These general fund monies may be used for the purpose of equipping, maintaining and operating the library, including the payment of a librarian, purchasing of books, equipment and the defraying of fixed expenses. Also, county law library fund monies may be used for similar purposes as long as a majority of the circuit judges of the county authorize the expenditure of the funds.

A librarian hired by the county board to aid the board in maintaining the county law library would be considered a county employee for retirement purposes (Ill. Rev. Stat., 1971, ch. 108 1/2, par. 7-101, et seq.) and for group insurance purposes. Ill. Rev. Stat., 1971, ch. 34, par. 426.

Originally, the third paragraph of the County Law Library Act read as follows:

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"The expense of establishing and maintaining such library shall be borne by the county. To defray such expense, in any county having so established such a county law library, the clerks of all trial courts of record located at the county seat of government shall charge and collect a county law library fee of \$1.00, in all civil cases, such fee to be paid for and at the time of filing the first pleading, papers, or other appearance filed in such cases."

Laws of 1961, p. 472.

However, in 1965 this paragraph was amended to delete reference to trial courts of record. Then, said paragraph read as follows:

"The expense of establishing and maintaining such library shall be borne by the county. To defray such expense, in any county having so established such a county law library, the clerks of all trial courts located at the county seat of government shall charge and collect a county law library fee of \$1.00, in all civil cases, such fee to be paid for and at the time of filing the first pleading, paper, or other appearance filed in such cases."

Laws of 1965, p. 3584

Amendment of a statute is a legislative act intended to change some prior existing law by adding to, or taking from,

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it some particular provision. It is presumed that in amending a statute the legislature intended to change the existing law. (Livingston v. Meyers, 6 Ill. 2d 325). A change in phraseology of a law by amendment creates a presumption that it was intended to change the law as it formerly existed. (Houghton Mifflin Company v. Continental Illinois Natl. Bank & Trust Co. of Chicago, 293 Ill. App. 423). Where words are stricken from a statute by amendment it must be concluded that the General Assembly deliberately intended to change the law. (Towers v. Schull, 3 Ill. App. 2d 358). The 1965 amendment to the County Law Library Act reflects the changes in the judicial system effected by the Judicial Article of 1962. (Ill. Const., Art. VI [1962]). The judicial reorganization created by the Judicial Article of 1962, which became effective January 1, 1964, resulted in the elimination of several trial courts, some of which were not courts of record, (Ill. Const., Art. VI, Schedule, par. 5 [1870, as amended]) and the transferring of the jurisdiction of these courts to the circuit courts.

Illinois does not have a small claims court per se. It does have a small claims statute (Ill. Rev. Stat., 1971, ch.

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110A, par. 281 to 288) which provides for certain procedures for bringing a tort or contract action amounting to a claim of \$1,000 or less. This small claims action is brought, of course, in the circuit court. Therefore, I am of the opinion that the law library fee may be collected by the clerk from each party to a small claims civil law suit.

In 1968, the Illinois Appellate Court in Moseid v. McDonough, 103 Ill. App. 2d 23, had the occasion to construe the third paragraph of the County Law Library Act. At this time, the clerk of the circuit court in Cook County was collecting \$1.00 from each party to a civil law suit. Plaintiff contended that the statute authorized only the collection of \$1.00 per case. The court upheld plaintiff's position and stated, at page 34:

"* * * a close reading of the words used in the statute yields strong support for plaintiff's contention that only one fee was meant to be collected in each case. The words of authorization are to collect a fee of \$1.00 in all civil cases with such fee to be paid at the filing of the first pleading, paper, or other appearance filed in such cases. It seems to us that the use of the singular term, 'a fee,' to describe the collection to be made in all cases is significant, absent a clear subsequent direction that it be applied to a

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responding party as well as to the first pleader. This concept also appears to be fortified by use of the term, 'the first' pleading, etc., filed. Again, in their ordinary meaning, the words, 'the first' describe only one pleading to be filed in such cases, in the absence of a clear indication to the contrary."

Shortly thereafter, in 1969, the third paragraph of the County Law Library Act was amended to its present form.

Now, the third paragraph reads as follows:

"The expense of establishing and maintaining such library shall be borne by the county. To defray such expense, in any county having so established such a county law library, the clerks of all trial courts located at the county seat of government shall charge and collect a county law library fee of \$1, such fee to be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases, but no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance."

It should be noted that the term "each party" was added by the amendment. Since the legislature is presumed to intend to change the law by amending a statute, I am of the opinion that the addition of the phrase "each party" was intended to authorize the collection of the \$1.00 filing fee

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from each party to a civil law suit and to change the system of collecting only \$1.00 per case as authorized in the Moseid case.

It should be noted that the \$1.00 filing fee is subject to the qualification that no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance. Thus, multiple plaintiffs represented in a single pleading, paper or other appearance must pay only \$1.00 as their filing fee. This applies to defendants and other parties as well.

In answer to your question A, the county board may create the position of county law library librarian.

In answer to your question B, a majority of the circuit judges of Winnebago County may not create the position of county law library librarian.

In answer to your question C, the county board has the authority to hire the librarian and determine the amount of compensation to be paid the librarian.

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In answer to your question D, the compensation of the librarian may be paid from the county law library fund as long as a majority of the circuit judges approve a disbursement from the fund. Also, county general funds may be used to pay such compensation either wholly or in part.

In answer to your question E, a person hired as a law librarian would be considered a county employee for retirement benefit and group insurance purposes.

In answer to your question F, general county funds may be expended for the purpose of equipping, maintaining and operating a county law library. Also, funds of the county law library fund may be used for such purposes.

In answer to your question G, a \$1.00 law library fee is payable to the clerk of the trial court by each party to a civil law suit, including defendants, subject to the qualification that no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance.

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In answer to your question H, the law library fee is chargeable by the circuit clerk against all parties to a small claims civil law suit.

Very truly yours,

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