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SPRINGFIELD

FILE NO. S-330

July 29, 1971

COURTS

**Costs - Sheriff's Fees
State's Liability for Payment**

**Mr. Elliot W. Frank, Chairman
Illinois State Toll Highway Authority
East-West Tollway
Oak Brook, Illinois 60521**

Dear Mr. Frank:

I have your letter of July 16, 1971 wherein you state:

"In connection with lawsuits filed by The Illinois State Toll Highway Authority in the Illinois courts, the question has arisen as to the necessity of paying filing fees and sheriff's fees. The Illinois Court Administrator's office has issued instructions to the various clerks of courts in the State, advising them that the Authority is not a State agency and, therefore, is not exempt from paying such fees.

You are requested to issue an opinion as to the necessity for the Illinois State Toll Highway Authority to pay filing fees and sheriff's fees in connection with suits filed in Illinois."

Our research reveals that the sovereign is immune from payment of court costs or sheriff's fees absent specific statutory authority to the contrary. The immunity of the sovereign from liability for costs extends to its boards, commissions, and other agencies.

Illinois Revised Statutes, Chapter 33 §17 provides:

In all suits and actions commenced or to be commenced for and on behalf of the people of this state, or the governor thereof, or for or on

behalf of any county of this state, or in the name of any person for the use of the people of this state, or any county, then and in every such case, if the plaintiff shall recover any debt or damages in such action or suit, the plaintiff shall recover costs as any other person in like cases; but if such plaintiff suffer a discontinuance, or be non-suited or non-pros'd, or verdict pass against such plaintiff, the defendant shall not recover any costs whatever. Nothing in this section contained shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people or a county, upon any penal statute.

The Illinois Supreme Court commenting upon §17 has stated that, "It is an established principle that the People are never liable for costs unless rendered liable under an express statutory provision". The People v. Summy, 377 Ill. 255, 36 N.E. 2d 331 (1941).

And, The Court has noted that "a state is never bound to give a bond for costs in any case; neither does it ever pay costs, except in some particular way pointed out by statute." The People v. Pierce, 6 Ill. 533, (1844).

The Pierce case was cited with approval in the case of Deneen v. Unverzagt, 225 Ill. 378, 80 N.E. 321 (1907). The Court there stated:

"The general rule undoubtedly is that the State is never liable for costs unless made so by some provision of the statute. In the Encyclopedia of Pleading and Practice (vol. 5, p. 151,) the rule is announced as follows: 'At common law the rule was that the king should neither pay nor receive costs, as the former was considered his prerogative and the latter beneath his dignity; and the general terms of statutes giving costs did not include the sovereign. The same principle has been applied in this country in suits, either civil or criminal,

in which the Federal or State governments, including municipal corporations when acting as a State agency, are parties; and thus they are liable only in the event of express statutory provision, which, however, is now quite general." (To the same effect see 20 Ency. of Pl. & Pr., p. 592). The same rule was recognized by this court in the case of People v. Pierce. . ."

In Galpin v. City of Chicago, 249 Ill. 554, 94 N.E. 961 (1911), the Court said:

"The common law does not authorize taxing or allowing costs in any case, and hence in this state judgments for costs must rest upon statutes. Where the legislature has not authorized them they should not be awarded. It is also a general rule that statutes which impose costs are to be strictly construed. (Citing cases) The court cannot, merely by inference and implication, assume the power and exercise the authority to impose costs against the State."

And finally in People v. Rocco, 4 Ill. App. 2d 238, 124 N.E. 2d 25 (1955), the Appellate Court stated that "It is the established principle that the People are never liable for costs unless rendered liable under an express statutory provision."

Thus from the foregoing material, there is no doubt that the State of Illinois and its agencies, boards and commissions are immune from payment of court costs or sheriff's fees in any of the Courts of this State or to any Clerks of said Courts or Sheriffs of said Courts, unless rendered liable for costs under express statutory provision. Therefore, the next question is whether or not the Illinois State Toll Authority is a State Agency.

From the following it can readily be seen that it is a State Agency. The Toll Highways Act of August 7, 1967, is found in Chapter 121, Sections 100-1 through 100-35, Illinois Revised Statutes, 1969. Section 100-1, the legislative declaration to this Act, announces:

"It is hereby declared, as a matter of legislative determination, that in order to promote the public welfare, and to facilitate vehicular traffic by providing convenient, safe, modern and limited access highways designed for the accommodation of the needs of the traveling public through and within the State of Illinois, that it is necessary in the public interest to provide for the construction, operation, regulation and maintenance of a toll highway or a system of toll highways, incorporating therein the benefits of advanced engineering skill, design, experience and safety hazards, and to prevent automotive injuries and fatalities, and to create The Illinois State Toll Highway Authority, as an instrumentality and administrative agency of the State of Illinois, and to confer upon and vest in said Authority all powers necessary or appropriate to enable said Authority to carry out the foregoing stated legislative purpose and determination." (emphasis supplied).

Section 100-3 also states that "There is hereby created an Authority to be known as the Illinois State Toll Highway Authority which is hereby constituted an instrumentality and administrative agency of the State of Illinois." Section 100-15 sets out the duties of the Attorney General of the State of Illinois and provides that the Attorney General shall be the legal advisor to and for the Authority. This section is of special significance because the Illinois Supreme Court has stated that the Attorney General is the sole legal advisor of the executive officers, commissions, boards and departments of State government, and it is his duty to conduct the law business of the State. Fergus v. Russell, 270 Ill. 304, 110 N.E. 130 (1915).

Section 100-16.1 provides that the Rules and Regulations of the Authority shall be filed pursuant to the provisions of "an Act concerning Administrative Rules" approved June 14, 1951. This refers to Chapter 127, Section 263, et seq., which deals with

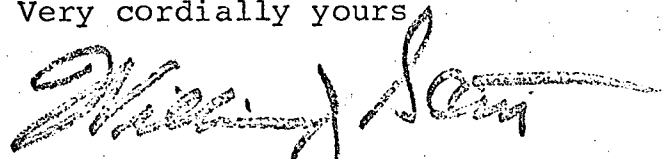
"Rules and Regulations of State Agencies" and Section 263 of said Act defines Agency as follows "'Agency', when used in this Act, includes any State Board, Commission, Department or officer of the State Government, . . .".

Provisions of the Toll Highway Act thus identify the Illinois State Toll Highway Authority, as an agency of Illinois State government, which, on the basis of the foregoing rationale is immunized from court costs and sheriff's fees absent specific legislation to the contrary.

Hence, the final question is whether the Authority is liable for costs under a specific Illinois statute. Illinois Revised Statutes, Chapter 121 §100-1 through 100-35 which created the Illinois State Toll Highway Authority makes no reference to the subject of court costs or sheriff's fees; nor am I aware of any other statute which imposes such costs.

Accordingly, since the State of Illinois and its agencies are immune from court costs and sheriff's fees in the absence of statutory liability and the Illinois State Toll Highway Authority is a State Agency, the authority is not required to pay such costs because the General Assembly has not so provided.

Very cordially yours



WILLIAM J. SCOTT
Attorney General of Illinois