



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 30, 2013

FILE NO. 13-003

COUNTIES:

Retention of Coroner's Fees  
Collected Under Section 4-7001  
of the Counties Code;  
Budget Considerations

The Honorable Daniel P. Brady  
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State Representative, 105<sup>th</sup> District  
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The Honorable Gary Forby  
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The Honorable David Koehler  
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The Honorable Brandon Phelps  
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The Honorable Patrick Verschoore  
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Gentlemen:

I have your letter inquiring whether a county board may: (1) require that fees deposited into the coroner's special account pursuant to section 4-7001 of the Counties Code (55

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ILCS 5/4-7001 (West 2012)), be transferred to the county's general fund, if unexpended at the conclusion of the county's fiscal year; and (2) reduce a coroner's budget for the next fiscal year by the amount of funds anticipated to be available in the coroner's special account. For the reasons set out below, it is my opinion that a county board: (1) does not possess the authority to order that unexpended funds in the coroner's special fee account be transferred into the county general fund; and (2) is not precluded from considering the funds available for expenditure by the coroner in the special account when determining the appropriation for the coroner's office in a succeeding fiscal year.

### **BACKGROUND**

In 2010, the General Assembly enacted Public Act 96-1161, effective July 21, 2010, amending section 4-7001 of the Counties Code to increase the fees that a coroner may collect for providing cremation permits and copies of certain records. Public Act 96-1161 further amended section 4-7001 to provide:

*All fees under this Section collected by or on behalf of the coroner's office shall be paid over to the county treasurer and deposited into a special account in the county treasury. Moneys in the special account shall be used solely for the purchase of electronic and forensic identification equipment or other related supplies and the operating expenses of the coroner's office. (Emphasis added.)*<sup>1</sup>

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<sup>1</sup>Prior to its amendment, section 4-7001 provided, in pertinent part:

All fees under this Section collected by or on behalf of the coroner's office *shall be \* \* \* deposited into the general fund of the county.* (Emphasis added.) 55 ILCS 5/4-7001 (West 2008).

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## ANALYSIS

It is well established that non-home-rule counties possess only those powers that are expressly granted to them by the constitution or by statute, together with those powers that are necessary to effectuate the expressly granted powers. Ill. Const. 1970, art. VII, §7; *Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981); *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 694 (2004), *appeal denied*, 212 Ill. 2d 555 (2004); *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 724 (2003). Section 5-1016 of the Counties Code (55 ILCS 5/5-1016 (West 2012)) authorizes the county board to "manage the county funds and county business, except as otherwise specifically provided." County boards generally have broad discretion regarding budgetary matters. *See generally In re Application of County Collector*, 41 Ill. App. 3d 106, 109 (1976) ("[t]he estimation of the amount required to meet the obligations of a taxing district is ordinarily committed to its reasonable discretion and the court will not interfere with the district's exercise of its sound business judgment except where there is a clear abuse of discretion"). If the General Assembly limits the use of county funds to specific purposes, however, the county board is bound by those limitations. *See Weeks v. Hoffman*, 1 Ill. App. 3d 337, 338-39 (1971) (section 25.02 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1969, ch. 34, par. 403), the precursor to current section 5-1016 of the Counties Code, confers on county boards the power to manage county funds and transact county business according to law); *see generally* Ill. Att'y Gen. Op. No. 97-027, issued December 23, 1997, at 6.

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### **Transfer of Coroner's Fees**

Your first question concerns whether a county board may transfer unexpended moneys from the coroner's special account to the county general fund at the close of each fiscal year. As a general principle, funds that are allocated for a specific purpose "shall be kept as a separate fund in the county treasury[.]" *Cook County v. McCrea*, 93 Ill. 236, 238 (1879); *see generally Holmgren v. City of Moline*, 269 Ill. 248, 254 (1915); *In re Application of the County Collector of Cook County*, 332 Ill. App. 3d 277, 299 (2002), *appeal denied*, 201 Ill. 2d 568 (2002). Here, section 4-7001 of the Counties Code expressly provides that "[a]ll fees under this Section collected by or on behalf of the coroner's office shall be \* \* \* deposited into a special account in the county treasury" and may be used only for the "purchase of electronic and forensic identification equipment or other related supplies and the operating expenses of the coroner's office."

Moneys that are held in a special fund for a specific purpose pursuant to law may only be transferred if the special fund's purpose has been satisfied (*Hunt Drainage District v. Cole*, 283 Ill. 105, 115-16 (1918)) or in accordance with Illinois law. *Valstad v. Cipriano*, 357 Ill. App. 3d 905, 917-18 (2005), *appeal denied*, 216 Ill. 2d 736 (2005). For example, when a tax is levied to pay a specific debt and its proceeds are deposited into a special fund, if money remains after the debt is paid, the General Assembly has specifically authorized the county to transfer the

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surplus moneys into its general fund. 55 ILCS 5/5-1011 (West 2012). In contrast, the General Assembly clearly contemplated that funds in the coroner's special account would be used for ongoing expenses (*i.e.*, "operating expenses of the coroner's office"). As a result, unless the office of coroner is eliminated (*see* Ill. Const. 1970, art. VII, §4(c)), the purposes of the special account will not be satisfied at any point. Further, the language of section 4-7001 does not authorize the transfer of moneys from the coroner's special account to the county's general fund.

The debates concerning Senate Bill 2529, which became Public Act 96-1161, confirm this interpretation. During the House debate, two of the bill's sponsors explained that the amendments would ensure that "the funds would go directly to a line item within the coroner's budget for specific operations of that office through the county treasurer" (remarks of Rep. Brady, April 27, 2010, House Debate on Senate Bill No. 2529, at 27-28) and would not be subject to any sweeps. Remarks of Rep. Phelps and Rep. Brady, April 27, 2010, House Debate on Senate Bill No. 2529, at 26-28. The reference to fund "sweeps" describes the transfer of money from a special fund to a general fund. *See generally Illinois State Chamber of Commerce v. Filan*, 216 Ill. 2d 653, 656 (2005). These remarks are consistent with the plain and unambiguous language of the amended statute, and clearly demonstrate that the General Assembly intended to preclude a county board from transferring unexpended funds from the coroner's special account to any other fund at any time. Accordingly, it is my opinion that the county board has no authority to order the transfer of moneys from the coroner's special account to the county general fund at the close of the fiscal year.

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### **Coroner's Budget**

You have also asked whether the county board may reduce the coroner's budget by the amount of fees collected during the preceding fiscal year. It is the county board's duty to fund county offices, including the office of coroner. 55 ILCS 5/5-1106 (West 2012). Within the constraints of law (*see* 1984 Ill. Att'y Gen. Op. 9), a county board has reasonable discretion in determining the amount to be appropriated and the uses of the appropriated funds. Your question essentially asks whether the county board may include the balance and any anticipated receipts of the coroner's special account in calculating the coroner's overall annual appropriation.

Sections 6-1001 and 6-1002 of the Counties Code (55 ILCS 5/6-1001 (West 2012); 55 ILCS 5/6-1002 (West 2012), as amended by Public Act 98-419, effective August 16, 2013) set out the process that the county board must follow in appropriating funds. These sections provide, in pertinent part:

In all counties not required by law to pass an annual appropriation bill within the first quarter of the fiscal year, the county board or board of county commissioners, as the case may be, shall adopt each year an annual budget under the terms of this Division for the succeeding fiscal year. 55 ILCS 5/6-1001 (West 2012).

The annual budget shall contain: (a) A statement of the receipts and payments and a statement of the revenues and expenditures of the fiscal year last ended.

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(b) *A statement of all moneys in the county treasury or in any funds thereof, unexpended at the termination of the fiscal year last ended \* \* \*.*

(c) *Estimates of all probable income for the current fiscal year and for the ensuing fiscal year covered by the budget, specifying separately for each of said years the estimated income from taxes, from fees, and from all other sources. \* \* \**

(d) *A detailed statement showing estimates of expenditures for the current fiscal year, revised to the date of such estimate, and, separately, the proposed expenditures for the ensuing fiscal year for which the budget is prepared. \* \* \**

(e) *A schedule of proposed appropriations itemized as provided for proposed expenditures included in the schedule prepared in accordance with the provisions of paragraph (d) hereof, as approved by the county board or the board of county commissioners. Said schedule, when adopted in the manner set forth herein, shall be known as the annual appropriation ordinance. (Emphasis added.) 55 ILCS 5/6-1002 (West 2012), as amended by Public Act 98-419, effective August 16, 2013.*

Section 6-1005 of the Counties Code (55 ILCS 5/6-1005 (West 2012)) further states that, with certain limited exceptions not applicable here, "no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been previously made."

Thus, under the Code, the county's annual budget must include, among other things, a statement of all unexpended moneys in the county treasury and in any county fund, an estimate of the probable income from all sources in the next fiscal year, including income from

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fees, and a schedule of proposed appropriations and the expenditures they will be used to fund.

Although the coroner's special account constitutes a special fund, the language of the Code makes it clear that special funds are nonetheless subject to the county budget and appropriation process, and moneys in them cannot be paid out without an appropriation by the county board.

*See generally* 1991 Ill. Att'y Gen. Op. 233, 236. As a result, when determining the coroner's annual budget, the county board must identify the unexpended moneys in the coroner's special account and the anticipated revenue in that fund for the next fiscal year. The county board also must provide an appropriation for the coroner's office's proposed expenditures. This would include appropriations for "autopsies, medical examinations, laboratory fees, \* \* \* travel expenses of the examining physician and the costs of exhuming a body[,]" which are required to be paid from the county's general fund. 55 ILCS 5/3-3014 (West 2012).

In creating the coroner's special account, the General Assembly provided that the moneys in the account shall be used "for the purchase of electronic and forensic identification equipment or other related supplies and the operating expenses of the coroner's office." 55 ILCS 5/4-7001 (West 2012). Because of the broad language allowing the moneys to be used for "operating expenses," nothing precludes the county board from considering the anticipated revenue in the coroner's special account as a source of funding for the operations of the coroner's office. Accordingly, it is my opinion that after considering all available revenue sources (the



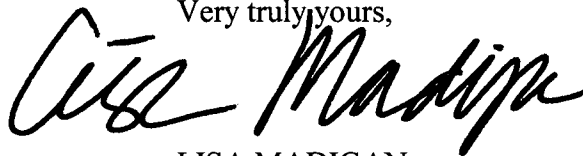
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coroner's special account, other special funds, and the county general fund), in determining the appropriation for the coroner's office, the county board may adjust the amount of the appropriation from the various revenue sources by the amount of moneys expected to be available in the next fiscal year.

#### CONCLUSION

It is my opinion that the fees collected pursuant to section 4-7001 of the Counties Code must be deposited into the coroner's special account to be used solely for the specified purposes. Unexpended fees must be retained in the coroner's special account at the close of each fiscal year and may not be transferred into the county's general fund. In calculating the appropriation for the coroner's office, it is my opinion that the county board is not precluded from considering the funds that are anticipated to be available for expenditure by the coroner in the special account.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN  
ATTORNEY GENERAL