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June 24, 1975

FILE NO. S-930

COUNTIES:

County Funds
Purchase of Stamps, License
Plates, Etc.

Honorable John J. Bowman
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Dear Mr. Bowman:

I have your letter wherein you state:

There are certain items which are necessary to the conduct of County business which cannot be obtained prior to cash payment. Specifically, these items include, but may not be limited to, stamps and license plates. We request your opinion as follows:

1. Can a county, in order to purchase these items, draw a warrant on the County Treasurer for an amount certain without following the procedure set forth in Chapter 34, Section 605 of the Illinois Revised Statutes, 1973?

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2. Can a county set up a budgetary item for such expenditures? Said budgetary item would be for expenses of the County Board, but not to include expenses of county officers, such as the Treasurer, Sheriff, Coroner, Auditor, County Clerk and the Recorder?

3. Must such items be considered claims against the county?"

DuPage County is not a home rule unit. The general rule is that counties, other than home rule counties, have only those powers granted to them by law plus those powers that may be implied as necessary to carry out their statutory powers. Ill. Const., art. VII, sec. 7; Heidenreich v. Ronske, 26 Ill. 2d 360.

It is my understanding that the financial transactions about which you are inquiring involve a simultaneous exchange of county funds for certain commodities. In your letter you use the examples of the purchase of postage stamps and license plates. Both situations involve purchases from entities that are the sole supplier of the particular commodity. The financial arrangements required by a supplier must sometimes of necessity be obeyed. As such, the usual procedure by which the county pays its claims as delineated in section 35 of "AN ACT to revise the law in relation to

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counties" (Ill. Rev. Stat. 1973, ch. 34, par. 605) is not workable and cannot be followed.

Said section 35 reads as follows:

"§ 35. Before any claim against a county is audited and allowed, the claimant or his agent shall verify the same by his affidavit, stating that the several items therein mentioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid after allowing all just credits. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, and the nature of the claim is not such that the allowance is discretionary with the county board, such person may appeal from the decision of such board to the circuit court of the same county, upon filing bond with the clerk of such court within twenty days after the rendition of the decision, with such security as shall be approved by such clerk, in the penal sum of \$250, payable to the People of the State of Illinois, for the use of such county, conditioned that he will prosecute the appeal with effect, and pay all costs that may be adjudged against him."

Section 35 was initially enacted into law in 1874 and has never been amended. It specifically envisions a situation where an individual swears by his affidavit that he has furnished articles or rendered services to the county and is justly entitled to the amount claimed. Section 35 is not applicable to those financial transactions whereby county

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funds must by necessity be simultaneously exchanged for the delivery of goods or the rendering of a service. In the case of such simultaneous performance of a contract, it would not be necessary for the individual or individuals receiving county funds to execute an affidavit. Thus, it is not necessary for an agent of the U.S. Post Office to make out an affidavit swearing that he exchanged postage stamps for county funds.

It should be emphasized that the avoidance of the procedures set forth in section 35 should be allowed by the county board only in those rare instances where the county needs certain goods or services and must abide by the terms of the supplier in simultaneously exchanging county funds for the goods or services. My predecessor opined that the Rock Island County Board could not authorize persons traveling on county business to obtain a cash advance for travel expenses. (1961 Ill. Att'y. Gen. Op. 119.) He cited section 35 and LeFevre v. County of Lee, 353 Ill. 30, to support his opinion. In LeFevre, the Illinois Supreme Court, at page 32, stated:

"A county is a creature of the statute and has no powers except those expressly conferred upon it by statute or such powers as are necessary to carry out the powers so conferred. The powers of

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county boards over county funds are to be found in the 25th section of the Counties act. They are, (1) the care and custody of real and personal estate owned by the county; (2) to manage the county funds and county business except as otherwise specifically provided; and (3) to examine and settle all accounts against the county and all accounts concerning the receipts and expenditures of the county. While it is empowered to appropriate money it may not appropriate funds for other than county purposes. It has no power to appropriate, give away or dispose of county funds or property for a purpose not authorized by law. (Scates v. King, 110 Ill. 456; Perry v. Kinnear, 42 id. 160; Colton v. Hanchett, 13 id. 615) "

As pointed out in LeFevre, the county board has the power to manage the county funds and business, except as otherwise specifically provided (Ill. Rev. Stat. 1973, ch. 34, par. 403) and the power to examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county, and to establish procedures therefor. Ill. Rev. Stat. 1973, ch. 34, par. 404.

The ordinary procedure whereby the county receives goods or services before it authorizes payment should be followed if at all possible. Only in those situations where it is necessary to simultaneously exchange county funds for

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goods and services may the county board authorize the payment of county funds without first receiving a claim pursuant to section 35.

In direct answer to your first question, I am of the opinion that the county board may authorize a warrant to be drawn payable to the U.S. Post Office (for the purchase of postage stamps) or the Illinois Secretary of State (for the purchase of license plates) for an amount certain without following the procedure set forth in section 35.

Turning to your second question, section 2 of "AN ACT in relation to the budgets of counties not required by law to pass an annual appropriation bill" (Ill. Rev. Stat. 1973, ch. 34, par. 2102) provides in pertinent part:

"§ 2. The annual budget shall contain:

* * *

(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. Said revised estimates and proposed expenditures shall show the amounts for current expenses and capital

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outlay, shall specify the several objects and purposes of each item of current expenses, and shall include for each of said years all floating indebtedness as of the beginning of the year, the amount of funded debt maturing during the year, the interest accruing on both floating and funded debt, and all charges fixed or imposed upon counties by law.

(e) A schedule of proposed appropriations itemized as provided for proposed expenditures included the schedule prepared in accordance with the provisions of paragraph (d) hereof, as approved by the board of supervisors or the board of county commissioners. Said schedule, when adopted in the manner set forth herein, shall be known as the annual appropriation ordinance. An amount not exceeding five per cent. of the total may be appropriated for contingent, incidental, miscellaneous, or general county purposes, but no part of the amounts so appropriated shall be used for purposes for which other appropriations are made in such budget unless a transfer of funds is made as authorized by this Act.

* * *

In answer to your second question, I am of the opinion that the DuPage County Board may set up a budgetary item for postage stamps and a budgetary item for license plates.

Turning to your third question, section 3 of "AN ACT to create the office of county auditor in certain counties, to

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provide for the appointment of county auditors in counties of less than 75,000 inhabitants, and to define the duties thereof" (Ill. Rev. Stat. 1973, ch. 34, par. 1504) reads in part:

"§ 3. The duties of the county auditor shall be to:

(a) Audit all claims against the county of whatsoever character, and recommend to the county board the payment or rejection of all bills presented.

* * *

(c) Approve all orders for supplies issued by the various county officers, before the orders are to be placed with the parties to whom the same are to be given.

(d) Keep a record of all contracts entered into by the county board and all authorized county officers, for or on behalf of the county.

(e) Report quarterly to the county board the entire financial operations of the county including all fees and emoluments due the county from the various county officers as earned, collected or received under performance to their duties, revenues estimated and received, expenditures estimated and received, obligations unpaid, the condition of all funds and appropriations and other pertinent information.

* * *

Before the county board may authorize the expenditure

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of county funds for postage stamps and license plates a request for such funds must be submitted to the county auditor for review. In this way, the county auditor can check to be sure that an appropriation is in existence and that enough funds are available to meet the request for the funds.

Thus, in answer to your third question, such a request for county funds to purchase postage stamps or license plates would be considered "claims against the county of whatsoever character" and must be submitted to the county auditor.

It should be noted that House Bill 1099 has passed both houses and is presently awaiting gubernatorial action. In its present form, House Bill 1099 amends section 35 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 605) relieving a claimant of the mandatory duty of verifying his claim upon the county but delegating to the county board discretionary authority to demand such verification.

Very truly yours,

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