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SPRINGFIELD

June 7, 1979

FILE NO. S-1439

OFFICERS:

Deposit or Investment of Funds
of Unknown Owners by County
Treasurer

Honorable Raymond W. McCamy
State's Attorney
Crawford County
Robinson, Illinois 62454

Dear Mr. McCamy:

This responds to your letter wherein you inquired about the investment of certain money being held by the county treasurer of Crawford County, a county having a population less than 150,000. You also inquired about the payment of interest on this money. The specific funds about which you inquired are proceeds belonging to unknown owners, which proceeds were derived from a partition sale. Such proceeds are being held by your county treasurer pursuant to section 22 of "AN ACT in relation to the partition of real estate, etc." (Ill. Rev. Stat. 1977, ch. 106, par. 65) which provides:

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"When a sale of premises is made, and no person appears to claim such portion of the money as may belong to any non-resident or person whose name is unknown, the court shall require such money to be deposited in the county treasury, subject to the further order of the court. All money so required to be deposited shall be received by the county treasurer and paid upon the order of the court."

It is my opinion that the proceeds belonging to the unknown owners, which proceeds were derived from a partition sale and are being held by your county treasurer could be deposited in a bank or other depository pursuant to the provisions of section 4b of "AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1977, ch. 36, par. 4b) which provides in pertinent part:

"In counties having a population of less than 150,000 the county board, when requested by the county treasurer, shall designate a bank or banks or other depository in which the funds and other public moneys in the custody of the county treasurer may be kept * * * .

* * *

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The terms "county treasurer" and "county moneys" are defined in section 1 of "AN ACT concerning county treasurers in counties containing more than 150,000 inhabitants, etc." (Ill. Rev. Stat. 1977, ch. 36, par. 17) as follows:

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* * *

The term 'county treasurer' shall include the county treasurer when acting as such or in any other official capacity incident to his incumbency of the office of county treasurer.

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The term 'county moneys' shall include all moneys to whomsoever belonging, received by or in possession or control of the incumbent of the office of county treasurer when acting as such or in any other official capacity incident to his incumbency of the office of county treasurer.

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The definition of "county moneys" set forth above includes all moneys to whomsoever belonging received by or in possession or control of the county treasurer. While this definition does not appear in "AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1977, ch. 36, par. 1 et seq.), this definition applies to all county treasurers for it is merely declaratory of the law. This was my conclusion in opinion No. S-978 (1975 Ill. Atty Gen. Op. 252,254) based on The People v. West Englewood Bank, 353 Ill. 451.

Since the funds in question are held by the county treasurer in the county treasury, in his official capacity and are in his control, they may be deposited by him even though the funds do not belong to the county.

Section 6.2 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, etc." (Ill. Rev. Stat. 1977 Supp., ch. 36, par. 22.2), while it provides more explicit authority for investment by county treasurers, is applicable only to counties containing more than 150,000 in-

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habitants, as appears from the title of the Act and the express provisions of section 23 (Ill. Rev. Stat. 1977, ch. 36, par. 39), which provides that the Act applies in every county containing more than 150,000 inhabitants. Unlike some sections of the Act, it is not simply declaratory of the common law. Since Crawford County contains less than 150,000 inhabitants, neither the Act nor section 6.2 thereof is applicable.

In your second question you asked whether interest earned on the funds of these unknown owners belongs to the county or to the parties to whom the funds are ultimately determined to belong. Section 6.1 of "AN ACT concerning county treasurers, etc." (Ill. Rev. Stat. 1977, ch. 36, par. 22.1) provides:

"All earnings accruing on any investments or deposits made by the County Treasurer whether acting as such or as County Collector, of county monies as in this Act is defined, shall be credited to and paid into the County Treasury for the Benefit of the county corporate fund to be used for county purposes, except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund."

Although this provision does not apply to counties having a population less than 150,000, and does not appear in "AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1977, ch. 36, par. 1 et seq.), it is relevant because it follows the common law. In Lakefront Realty Corporation v. Lorenz (1960), 19 Ill. 2d 415, an issue before the court was

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whether interest should be paid on tax refunds. The court said at page 423:

" * * * The latter view has its antecedents in the rule that interest, being a creature of statute, is recoverable only by statute or contract, and in the practical aspects of the circumstances that a tax collector, being a mere trustee of public funds collected for specific purposes, has no money to pay interest in the absence of statutory authority to establish a fund for that purpose.

We are of the opinion the latter view is the only view compatible with the statutory system which provides for the appropriation, levy, collection and disbursement of taxes in this State, and we think too, as other courts have pointed out, (Kaemmerling v. State, 81 N.H. 405, 128 Atl. 6; Schlesinger v. State, 195 Wis. 366, 218 N.W. 440,) that the silence of our refund statute on the question of interest discloses a legislative intention to deny it. Accordingly, we conclude that plaintiff is not entitled to interest in the absence of a statute imposing that liability. This being so, the failure of the statutory remedy to provide for the recovery of interest is no measure of its adequacy or inadequacy.

* * *

Also, in Locasio et al. v. Rosewell (1977), 50 Ill. 3d 704, the court denied an action to require a county treasurer to pay interest on funds deposited with him as the result of various condemnation proceedings. The court said at page 706:

" * * *

It is well settled that in Illinois, in the absence of a contract or statutory provision, interest is not recoverable. (See People v. Meyerowitz (1975), 61 Ill. 2d 200, 211, 335 N.E.2d 1; Aldrich v. Dunham (1855), 16 Ill. 403, 404.)

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This proposition has its roots in the rule that interest is a creature of statute, and should be recoverable only by statute or contract. Lakefront Realty Corp. v. Lorenz (1960), 19 Ill. 2d 415, 423, 167 N.E.2d 236.

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The proceeds belonging to these unknown owners are required by section 22 of "AN ACT in relation to the partition of real estate, etc." (Ill. Rev. Stat. 1977, ch. 106, par. 65) to be deposited in the county treasury. There is no statutory provision regarding the payment of interest on these funds. Since these proceeds are "county moneys", I am of the opinion that the interest earned on these deposited funds should be paid into the county treasury for the benefit of the county corporate fund. See, Lamb v. Fidelity Deposit Co. (1930), 257 Ill. App. 262.

Very truly yours,


ATTORNEY GENERAL