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SPRINGFIELD

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FILE NO. S-794

**COUNTIES:**

County Treasurer and Forest  
Preserve District Treasurer-  
Statutory Limitations on Deposit  
of County and Forest Preserve  
District Funds

Honorable John J. Bowman  
State's Attorney, DuPage County  
207 S. Reber Street  
Wheaton, Illinois 60187

Dear Mr. Bowman:

I have your letter wherein you state:

"Reference is made to Chapter 36, §20, and  
Chapter 57 1/2, §9(a), Illinois Revised Sta-  
tutes, 1973, regarding the legal limitations  
on the deposit of public monies to 75% of a  
depository's capital stock and surplus.

Does the statute permit the County Treasurer,  
who is also the Treasurer of the Forest Pre-  
serve District, to deposit at the same time  
in the same depository, County funds equal to

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75% of the depository's capital stock and surplus, and Forest Preserve funds equal to 75% of the depository's capital stock and surplus,

OR

Is the deposit limited to a combined total of County funds and Forest Preserve funds not exceeding 75% of the depository's capital stock and surplus?"

It is my understanding that the forest preserve district referred to in your letter is co-extensive with the boundaries of the county. There is no statutory provision by which a county treasurer is required to act as treasurer for a forest preserve district, ex officio or otherwise. It is my understanding, however, that the county treasurer is acting as treasurer for the forest preserve district at the request of the district's board of commissioners pursuant to the hereinafter mentioned constitutional provision.

Section 4 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, and concerning public funds within their custody and control \* \* \*" (Ill. Rev. Stat. 1973, ch. 36, par. 20) provides in pertinent part:

"§ 4. In counties having a population of more than 150,000 the county board, when requested by the County Treasurer, shall

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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 \* \* \*.

\* \* \* If such funds or moneys are deposited in a bank, the amount of such deposits shall not exceed 75% of the capital stock and surplus of such bank, and the County Treasurer shall not be discharged from responsibility for any funds or moneys deposited in any bank in excess of such limitation. \* \* \* "

Section 8b of "AN ACT to provide for the creation and management of forest preserve districts" (Ill. Rev. Stat. 1973, ch. 57 1/2, par. 9a) provides in pertinent part:

"§ 8b. The board of commissioners of any forest preserve district organized under this Act, when so requested by the treasurer of the district, shall designate a bank or banks or other depository in which the funds and moneys received by the treasurer, by virtue of his office, may be deposited. \* \* \*

\* \* \* If such funds or moneys are deposited in a bank, the amount of such deposits shall not exceed 75% of the capital stock and surplus of such bank, and the treasurer shall not be discharged from responsibility for any funds or moneys deposited in excess of such limitation. \* \* \* "

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It is my opinion, for the reasons which follow, that the county treasurer, who is also treasurer of the forest preserve district, can deposit in the same depository county funds not exceeding 75% of the depository's capital stock and surplus and forest preserve funds not exceeding 75% of the depository's capital stock and surplus.

It is a cardinal rule of statutory construction that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly. (Lincoln Nat. Life Ins. Co. v. McCarthy, 10 Ill. 2d 489; People ex rel. Kucharski v. Adams, 48 Ill. 2d 540.) It is my opinion that the legislative intent in enacting section 4 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, and concerning public funds within their custody and control \* \* \* ", supra, and section 8b of "AN ACT to provide for the creation and management of forest preserve districts", supra, was that the 75% limitation have separate application as to county funds on the one hand and forest preserve funds on the other.

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First, the offices of county treasurer and forest preserve district treasurer, although they may be held by the same person, are distinct offices. Section 8 of "AN ACT to provide for the creation and management of forest preserve districts" (Ill. Rev. Stat. 1973, ch. 57 1/2, par. 8) authorizes the president of the forest preserve district board of commissioners to appoint a treasurer. Section 1 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, and concerning public funds within their custody and control \* \* \* ", supra, (Ill. Rev. Stat. 1973, ch. 36, par. 17) provides in part:

"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."

Section 4(e) of article VII of the Illinois Constitution of 1970 provides:

"(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law."

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While the county treasurer may, under the above cited constitutional provision, act as treasurer of a forest preserve district, the latter position would not, in my opinion, be incident to his incumbency of the office of county treasurer within the meaning of section 1 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, and concerning public funds within their custody and control, \* \* \*", supra.

Secondly, the respective funds of the county and the forest preserve district are separate and distinct. Section 8b of "AN ACT to provide for the creation and management of forest preserve districts", supra, makes reference to forest preserve funds as the funds and monies received by the forest preserve treasurer by virtue of his office. Section 1 of "AN ACT concerning county treasurers, in counties containing more than 150,000 inhabitants, and concerning public funds within their custody and control \* \* \*", supra, provides in pertinent part:

"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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As noted above, it is my opinion that the position of treasurer for the forest preserve district would not be incident to the incumbency of the office of county treasurer. Thus, county funds would remain distinct from forest preserve funds.

Finally, separate statutes, each with the same 75% limitation, were enacted in regard to depositing of funds by the county treasurer and the treasurer of the forest preserve district respectively. Consequently, it can be inferred that the General Assembly did not intend that the separate funds be combined, in the event they should be deposited in the same depository, for purposes of determining compliance with the 75% limitation.

Moreover, it should be noted that, where the offices of county treasurer and treasurer of the forest preserve district are held by different individuals, there is a possibility that both funds would be deposited in the same depository. In such an instance, county funds not exceeding 75% of the depository capital stock and surplus and forest preserve funds not exceeding 75% of the depository's capital stock and surplus would be deposited in the same depository without violating

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the statutory limits. The effect of the statutes should not be changed merely because the respective offices are held by the same person.

It is my opinion that the county treasurer, who is also treasurer of the forest preserve district, can deposit in the same depository county funds not exceeding 75% of the depository's capital stock and surplus and forest preserve funds not exceeding 75% of the depository's capital stock and surplus.

Very truly yours,

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