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COUNTIES:
Power of County Board Over
County Law Library Funds

Honorable Creed D. Tucker
Presiding Circuit Judge
and
Honorable Thomas J. Difanis
State's Attorney, Champaign County

Court House
101 East Main
Urbana, Illinois 61801

Gentlemen:

I have your letter wherein you inquire regarding the disbursement of money from the County Law Library Fund as provided in section 1 of "AN ACT in relation to the establishment, maintenance and operation of county law libraries" (Ill. Rev. Stat. 1985, ch. 81, par. 81), which provides as follows:

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"The county board of any county may establish and maintain a county law library, to be located in any county building or privately or publicly owned building at the county seat of government. The term 'county building' includes premises leased by the county from a public building commission created pursuant to the Public Building Commission Act, approved July 5, 1955, as amended. After August 2, 1976, the county board of any county may establish and maintain a county law library at the county seat of government and in addition such branch law libraries in other locations within that county as the county board deems necessary.

The facilities of such libraries shall be freely available to all licensed Illinois attorneys, judges and other public officers of such county, and to all members of the public, whenever the court house is open.

The expense of establishing and maintaining such libraries shall be borne by the county. To defray such expense, in any county having so established such a county law library or libraries, the clerk of all trial courts located at the county seat of government shall charge and collect a county law library fee of \$2, and the county board may authorize a county law library fee of not to exceed \$6 to be charged and collected by the clerks of all trial courts located in the county, such fee to be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases, but no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance.

Each such clerk shall commence such charges and collections upon receipt of written notice from the chairman of such county board that the board has acted under the provisions of this Act to establish and maintain such a law library.

Such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and shall be remitted by such clerks monthly to the county treasurer, and retained by

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him in a special fund designated as the County Law Library Fund. Disbursements from such fund shall be by the county treasurer, on order of a majority of the resident Circuit judges of the circuit court of such county, except that in any county having a population of more than 1,000,000 inhabitants, the county board shall order disbursements from such fund and the presiding officer of the county board, with the advice and consent of the county board, may appoint a library committee of not less than 9 members, who, by majority vote, may recommend to such county board as to disbursements of such fund and the operation of such library. Such orders shall be pre-audited and such funds shall be audited by the county auditor, and report thereof rendered to the county board and to the judges.

Such fees shall not be charged in any criminal or quasi-criminal case, in any matter coming to any such clerk on change of venue, nor in any proceeding to review the decision of any administrative officer, agency or body."
(Emphasis added.)

You have advised this office that, pursuant to the aforementioned statute, the county board of Champaign County established a county law library and by ordinance ordered the imposition and collection of a law library fee. Since the establishment of the law library several years ago, a budget for its operation has been prepared by the Champaign County judges and submitted to the county board for inclusion in the county's annual budget. To staff the library, the county has employed a law librarian/research attorney. A substantial portion of the salary of the law librarian/research attorney is financed from the law library fund with the balance of the

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salary paid out of the county's general fund. Prior to the adoption of the 1985-86 county budget, the judges of the circuit court requested that the county board reclassify the law librarian/research attorney and increase the level of compensation for the position, but the county board refused to honor the judges' request. Subsequent to the refusal of the county board, a majority of the resident circuit judges entered an administrative order pursuant to section 1 of "AN ACT in relation to the establishment, maintenance and operation of county law libraries" directing the county treasurer to disburse money from the law library fund for the increased compensation for the law librarian/research attorney. Both the county treasurer and the county auditor, who countersigns all county checks, contend that they cannot obey the order because the county board has not appropriated from the law library fund any money for the purpose of paying the increased compensation.

Against this factual background, you pose the following questions:

1. Does the county board have authority to control disbursements from the law library fund by exercising control over the law library budget?
2. Do the resident circuit judges have the authority to appropriate funds as well as order disbursements from the law library fund where the county board refuses to make such an appropriation?
3. In disbursing funds from the law library fund, are the resident circuit judges required to stay within the budgeted amounts as established by the county board?

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4. If not, must the county board adjust or amend the law library budget to reflect the disbursements from the law library fund by the resident circuit judges?
5. Will the county treasurer and county auditor be in violation of the county budgetary laws if they comply with the administrative order requiring disbursement of additional compensation not included within the law library budget?
6. Can the county treasurer and county auditor be held in contempt for failing to comply with the administrative order?

It is well established that a county board possesses only those powers expressly granted by the constitution or by the General Assembly and those necessarily implied therefrom to effectuate the granted powers. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362; McDonald v. County Board of Kendall County (1986), 146 Ill. App. 3d 1051, 1055; People ex rel. Foreman v. Sojourners Motorcycle Club, Ltd. (1985), 134 Ill. App. 3d 448, 451.) In accordance with the statutorily established scheme of county government, the general power of county fiscal, financial, and budgetary management has been vested in the county board. For example, section 25.02a of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1985, ch. 34, par. 403) provides that the county board has the power "to manage the county funds and county business". As a complement to this power, the General Assembly has imposed upon the county board

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the duty to prepare and adopt an annual budget (Ill. Rev. Stat. 1985, ch. 34, par. 2101), which must take into account all sources of revenue and all anticipated expenditures of county funds. (Ill. Rev. Stat. 1985, ch. 34, par. 2102.)

As part of the preparation of the budget, the county board is required to pass an appropriation ordinance itemizing proposed expenditures. (Ill. Rev. Stat. 1985, ch. 34, par. 2102.) An appropriation of public money is generally defined as the setting apart from public revenue a certain sum of money for a specific object. (Illinois Municipal Retirement Fund v. City of Barry (1977), 52 Ill. App. 3d 644, 646; see also Midland Lumber Co. v. Dallas City (1916), 276 Ill. 172, 175.) The purpose underlying an appropriation ordinance has been described by the Illinois Supreme Court as follows:

" * * *

The object of an appropriation bill is to enable the taxpayer to compel the application of public funds to the purposes for which they were appropriated, to prevent the application of such funds to other purposes, and to prevent the expenditure of greater sums of money than are necessary for legitimate corporate purposes.
* * *

* * *

Hall v. County of Cook (1935), 359 Ill. 528, 540. "

The power to appropriate public funds must be distinguished from the power to disburse public funds. (See State ex rel. Kurz v. Lee (Fla. S. Ct. 1935), 163 So. 859,

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868.) As expressed above, an appropriation is the setting apart of certain funds for a particular purpose. A disbursement, on the other hand, is the paying out or the expending of funds. (See Black's Law Dictionary 416 (5th ed. 1979); People v. Battin (Cal. App. Ct. 1978), 143 Cal. Rptr. 731, 739-40; Wall v. Close (La. S. Ct. 1943), 14 So. 2d 19, 36.) It is clear that the appropriation of public funds is a condition precedent to the disbursement or expenditure of public funds; before any public funds may be obligated or expended, it is required that they first be appropriated by the governing legislative body. (Midland Lumber Co. v. Dallas City (1916), 276 Ill. 172, 175; Coleman v. Stevenson (Pa. Commw. Ct. 1975), 343 A.2d 375, 380; Jeffery v. Trevathan (Ark. S. Ct. 1949), 220 S.W.2d 412, 419; Bd. of Comm'rs of Carter County v. George D. Barnard Stationery Co. (Okla. S. Ct. 1935), 42 P.2d 515, 515-16.) With respect to counties, the General Assembly has codified the appropriation of county funds as a prerequisite to the disbursement of such funds in section 4 of "AN ACT in relation to the budgets of counties not required by law to pass an appropriation bill" (Ill. Rev. Stat. 1985, ch. 34, par. 2104), which provides as follows:

"Except as herein provided, neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual

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budget for that fiscal year. Provided, however, that the County Board may lease from any Public Building Commission created pursuant to the provisions of the Public Building Commission Act, approved July 5, 1955, as heretofore or hereafter amended, any real or personal property for county purposes for any period of time not exceeding twenty years, and such lease may be made and the obligation and expense thereunder incurred without making a previous appropriation therefor, except as otherwise provided in Section 25a of 'An Act to revise the law in relation to counties', approved March 31, 1874, as heretofore or hereafter amended. Nothing contained herein shall be construed to deprive the board of the power to provide for and cause to be paid from the county funds any charge upon said county imposed by law independently of any action of such board. Except as herein provided, 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." (Emphasis added.)

Within the constraints of law, a county board has reasonable discretion in ascertaining the objects for which county funds should be appropriated and the amounts appropriated therefor. (See generally 20 C.J.S. Counties § 235 (1940).) For example, except with respect to the employees of those officers possessing internal control powers (see 1984 Ill. Att'y Gen. Op. 9, 11), a county board may exercise its budgetary powers over county funds to determine the salaries of county employees. See, e.g., People ex rel. Bier v. Scholz (1979), 77 Ill. 2d 12, 18.

In section 1 of "AN ACT in relation to the establishment, maintenance and operation of county law

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libraries", the General Assembly conferred upon the county board the discretion to establish and maintain a county law library. If a county board establishes such a county law library, a fee of two dollars is charged and collected by the clerk of the circuit court on the first pleading, paper or other appearance filed by each party in all civil cases to defray the expense of operating the library. If the county board wishes to, it can increase the law library fee to an amount not to exceed six dollars. Such fees must be deposited with the county treasurer. Since the library is established by the county board, the cost of maintaining the library is a function of the county, the fee to finance the library is derived from and may be increased by county board action, and all collected law library fees are deposited with the county treasurer for his or her disbursement, such law library funds must be considered county funds. As county funds, they are subject to the budget and appropriation process of the county board as set forth in "AN ACT in relation to the budgets of counties not required by law to pass an appropriation bill", and such funds may not be paid out or disbursed without the requisite appropriation of the county board.

As indicated, however, the power of the county board to budget and manage county funds is not unbridled and absolute. The board's fiscal powers must be exercised in

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accordance with other statutory provisions. (Locke v. Davison (1884), 111 Ill. 19, 25; Weeks v. Hoffman (1971), 1 Ill. App. 3d 337, 338-39.) For example, in opinion No. 84-003, issued April 4, 1984, I advised that the various internal control statutes limited the authority of a county board to control, by itemized appropriations, specific expenditures in the offices of the subject county officers. With respect to those officers possessing internal control powers, I concluded as follows:

" * * *

* * * The county board's budgetary authority is limited to the appropriation of aggregate or lump-sum dollar amounts for the items delineated in such statutes, namely, necessary equipment, materials, and services. It naturally follows that, since the county board may not impose line-item budgetary constraints other than in the three classifications I have listed above, the county board has no power to restrict the county officer in the use of the budgeted amounts within a general classification, provided, of course, that any expenditure is within the amount of appropriation.

* * *

"

(1984 Ill. Att'y Gen. Op. 9, 13.)

While the County Law Library Fund is clearly composed of county funds subject to the county board's budget and appropriation process, it is necessary to determine whether section 1 of "AN ACT in relation to the establishment, maintenance and operation of county law libraries" imposes a similar qualification or limitation upon the county board's power over the fund.

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It is fundamental that, in the construction of a statute, the intention of the General Assembly must be ascertained and given effect. (Maloney v. Bower (1986), 113 Ill. 2d 473, 479; Patton v. Industrial Commission (1986), 147 Ill. App. 3d 738, 741.) Unless there is a manifest intention to the contrary, the language employed in a statute must be given its plain and ordinary meaning. (People v. Handley (1983), 117 Ill. App. 3d 949, 951; Village of Schaumburg v. Franberg (1981), 99 Ill. 2d 1, 5.) Furthermore, every part of a statute, consistent with the constitution, must be given effect. Dornfield v. Julian (1984), 104 Ill. 2d 261, 266.

The manifest purpose of "AN ACT in relation to the establishment, maintenance and operation of county law libraries" was to provide a central county repository of legal materials and information to benefit the bench in the administration of justice, the local bar in the representation of clients, and the local citizenry in the conduct of their legal affairs. By authorizing a special fee on the filing of certain pleadings, the Act created a mechanism to finance the library. The maintenance and operation of a law library requires specialized knowledge and technical skills, which an individual not familiar with the practice of law and the legal process would not possess. With respect to counties with less than 1,000,000 inhabitants, it is clear that the General

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Assembly intended the resident circuit judges of the county to exercise dominion and control over the county law library and the County Law Library Fund to ensure that the library would adequately serve its purposes.

The Act makes a clear distinction in terms of library governance between those counties with fewer than and those counties with more than 1,000,000 inhabitants. Prior to its amendment by the 82d General Assembly, that distinction was between counties with fewer than or more than 500,000 inhabitants. During the debates on one of the bills which increased the population threshold before county boards acquired disbursement powers over the Fund (see Public Act 82-155, effective January 1, 1982), the House sponsor said as follows:

" * * *

* * * This only concerns DuPage County and the law library. Because of the increase in our population, the law library will go into the hands of the county board and out of the hands of the attorneys and the judges unless this Bill is passed. I feel that the law library is better left in the hands of those who supposedly know what they're doing. * * *

* * *

(Emphasis added.) Remarks of Rep. Fawell,
May 14, 1981, House Debate on House Bill No. 639,
at 375.

During the Senate debate on a similar bill (see Public Act 82-129, effective August 12, 1981), the Senate sponsor stated:

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" * * *

* * * Senate Bill 420 amends the County Law Library Act and raises the population from five hundred thousand to one million. As you're probably aware, when . . . when a county goes over five hundred thousand the operation of the Law Library is turned over to the county board. What we have done is raised that population to one million, which allows our Circuit Court to run the Law Library. Quite frankly, we have a very good Law Library, it runs well and there's no problem with our county board or our Circuit Judges. It only affects DuPage County.

* * *

(Emphasis added.) Remarks of Sen. Phillip,
May 20, 1981, Senate Debate on Senate Bill
No. 420, at 194.

Because the General Assembly believed that the resident circuit judges of a county possess the requisite knowledge and skill to maintain and operate the law library, it conferred upon such judges the power to determine the use of and to make purchases with the County Law Library Fund for the operation of the law library. This result is clearly evinced by the plain statutory language providing that disbursements shall be on order of a majority of the resident circuit judges. Furthermore, the statute plainly reveals that a county board shall have no power over the disbursements from the Fund unless the subject county has a population in excess of more than 1,000,000 inhabitants. If the statute were construed to provide that the county board of a county with less than

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1,000,000 inhabitants could use its fiscal powers to determine the application of the County Law Library Fund with respect to specific items or to impose other budgetary constraints, that part of the statute which grants to the resident circuit judges the power to order disbursements would be rendered meaningless in contravention of well-established rules of construction.

In Kotche v. County Board of Winnebago County (1980), 87 Ill. App. 3d 1127, the clerk of the circuit court of the Seventeenth Judicial Circuit brought a declaratory judgment action regarding actions by the county board of Winnebago County affecting the internal operations of his office. The clerk alleged, inter alia, that the county board refused to pay salaries to the employees of his office in the amounts requested. The county board contended that its budgetary powers authorized its actions concerning the clerk's employees. Even though there is not a specific internal control statute benefiting the office of the clerk of the circuit court, the court held that the county board had no power to interfere in the internal operations of that office:

" * * *

* * * Section 27.3 of the clerks of courts act (Ill. Rev. Stat. 1977, ch. 25, par. 27.3) gives the board the authority to appropriate funds for clerk hire, but does not empower the board to control the hiring, firing, promotion, or compensation of the deputy clerks hired by the clerk of the circuit court pursuant to statute. (Ill. Rev. Stat. 1977, ch. 25, par. 9.) We deem

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it significant that section 26 of 'An Act to revise the law in relation to counties' (Ill. Rev. Stat. 1977, ch. 34, par. 432) imposes the duty upon the Board 'to provide reasonable and necessary expenses for the use of * * * clerks of courts * * *.' (Emphasis added.) The working of the statute indicates that the clerks retain the authority to use the provided funds for the internal operation of their offices and the board's grant of authority is limited to appropriation of necessary funds. * * *

* * *

(Emphasis added.) Kotche v. County Board of Winnebago County (1980), 87 Ill. App. 3d 1127, 1131. "

Similarly, the wording of section 1 of "AN ACT in relation to the establishment, maintenance and operation of county law libraries" indicates that the resident circuit judges possess the authority to use the County Law Library Fund for the operation of the law library and that the county board's authority is limited to appropriation of the County Law Library Fund. Based upon the foregoing, it is my opinion that the county board's budgetary authority is limited to the appropriation of the aggregate of the County Law Library Fund for the maintenance and operation of the county law library and that the resident circuit judges have the exclusive authority to determine the application and use of the Fund for the maintenance and operation of the library. Moreover, so long as the resident circuit judges do not spend or incur obligations of the County Law Library Fund in excess of appropriated

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amounts, it is my opinion that the county board has no power to restrict the judges in the use of the appropriated amounts or to limit or interfere with the disbursement of the County Law Library Fund for the maintenance and operation of the county law library.

Accordingly, in answer to the first question, it is my opinion that the county board does not have authority to control disbursements from the law library fund. While the County Law Library Fund must be appropriated, the county board has no discretion or power to review or revise the disbursement of that Fund collected in accordance with "AN ACT in relation to the establishment, maintenance and operation of county law libraries". The authority to order the disbursement of such funds is reposed solely in the hands of the resident circuit judges of the county limited only in that such funds must be employed for the operation and maintenance of the county law library. Of course, the county board may appropriate amounts from the county general fund for the purposes of the county law library, and over such amounts the county board would retain its customary discretion. (See 1973 Ill. Att'y Gen. Op. 65.)

As to your second question, it is my opinion that the resident circuit judges do not have the authority to appropriate funds as well as order disbursements from the law library fund where the county board refuses to make such an

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appropriation. Pursuant to "AN ACT in relation to the budgets of counties not required by law to pass an appropriation bill", the appropriation of county funds is a legislative process reserved for the county board. If the county board abuses its appropriation power, it is my opinion that the appropriate remedy is an action in mandamus to compel the appropriation of funds from the treasury. See Knuepfer v. Fawell (1983), 96 Ill. 2d 284; People ex rel. Bier v. Scholz (1979), 77 Ill. 2d 12; People ex rel. Judges Retirement System of Illinois v. Wright (1942), 379 Ill. 328; Judges, Third Circuit v. Wayne County (Mich. S. Ct. 1971), 190 N.W.2d 228, cert. denied, 405 U.S. 923, 92 S. Ct. 961 (1972); Annot., 59 A.L.R.3d 569 (1974).

With regard to your third question, it is my opinion that the resident circuit judges are required to stay within the amounts budgeted by the county board for the operation of the law library. The county board, however, must budget the County Law Library Fund in the aggregate.

As to the fourth question, if the county board has not budgeted or appropriated the aggregate of the County Law Library Fund for disbursement by order of the resident circuit judges, it is my opinion that the county board should take the appropriate action to remove any limitations or impediments it placed upon the disbursement of county law library funds by the resident circuit judges.

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In answer to question five, it is my opinion that the county treasurer and the county auditor will be in violation of section 4 of "AN ACT in relation to the budgets of counties not required by law to pass an appropriation bill" if they disburse county law library funds in accordance with the court's administrative order if the county board has not appropriated the county law library funds. Section 4 provides that all county funds must be appropriated before they can be expended. Since the appropriation of funds is a prerequisite to their expenditure, the treasurer and auditor have no power to disburse any money if the county board fails to appropriate the county law library funds.

In conjunction therewith and in answer to your sixth question, it is my opinion that the county treasurer and county auditor should not be held in contempt for failing to comply with the administrative order. The order in question was issued in the court's administrative capacity rather than judicial capacity, and generally, contempt is considered any act or conduct which is calculated to embarrass, hinder or obstruct the administration of justice. (See 12 I.L.P. Contempt § 21 (1983).)

As indicated above, the appropriate remedy, should the county board fail to appropriate the county law library funds in accordance with law, is an action in mandamus to compel the

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appropriation of such funds. (See In re Contempt of Common Pleas Court (Ohio S. Ct. 1972), 283 N.E.2d 126, 130; see generally In the Matter of the Court Reorganization Plan of Hudson County (N.J. App. Ct. 1978), 391 A.2d 1255, aff'd, 396 A.2d 1144 (N.J. S. Ct. 1979), cert. denied, 442 U.S. 930, 99 S. Ct. 2861 (1979).) If the county board has appropriated the county law library funds, and if the treasurer and auditor still fail to comply with an order of a majority of the resident circuit judges for disbursement of county law library funds, an action in mandamus would then lie against the county treasurer and the county auditor.

Very truly yours,


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