



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-1249

FEES AND SALARIES:
Return of Fees Improperly
Collected

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

Dear Mr. McCamy:

I have your letter wherein you request an opinion on the effect of the decision in City of Joliet v. Bosworth (1976), 64 Ill. 2d 516. You first ask whether the Illinois Supreme Court's decision in the Bosworth case should be applied retroactively to require the return to the governmental bodies from which tax collection costs were withheld of all collection fees previously withheld pursuant to the section that was held unconstitutional. It is my opinion that the case requires the return of tax collection costs that were previously withheld.

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The Bosworth case involved the question of the constitutionality of section 21a of "AN ACT concerning fees and salaries, and to classify the several counties of this State with reference thereto" (Ill. Rev. Stat. 1974 Supp., ch. 53, par. 39a) which provided that counties could bill each tax district within the county for its proportionate share of the actual costs incurred by the county in extending and collecting taxes on behalf of all taxing districts. Suits for declaratory judgment challenging the validity of the statute were instituted in the circuit courts of Will and Peoria Counties by certain taxing districts within those counties against the respective county treasurer in his capacity as ex officio county collector. The trial court in Will County entered an order declaring the statute invalid under the State and Federal Constitutions, enjoining the defendant county treasurer from collecting any charges or bills for the cost of collecting taxes pursuant to the statute, and directing that the defendant return to various taxing bodies all monies which had already been collected for such purposes. In Peoria County the trial court entered an order declaring the statute to be unconstitutional under the 1970 Constitution

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of Illinois, restraining future collection of costs or fees, and directing the return of all amounts theretofor collected by the defendant under the statute. On appeal the Supreme Court affirmed the judgments of the circuit courts of Will and Peoria Counties, declaring section 21a of "AN ACT concerning fees and salaries, etc." (Ill. Rev. Stat. 1974 Supp., ch. 53, par. 39a) invalid as contrary to the provisions of section 9a of article VII of the 1970 Constitution of Illinois.

Therefore, because the Supreme Court upheld the judgments of the trial court which involved the return of money that was previously collected, it is my opinion that the case does require the return to the governmental bodies of the collection fees that were previously collected pursuant to the unconstitutional section.

You next ask about what procedure is recommended for ascertaining the amount of previously collected fees and for returning the fees to the governmental bodies. You specifically ask whether the county treasurer should require governmental units to file petitions setting out the amount of claims, require proof of same and require a court order

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before returning fees previously collected. It is my opinion that the county treasurer should not require these procedures from the governmental units. The statute which was found unconstitutional, section 21a of "AN ACT concerning fees and salaries" (Ill. Rev. Stat. 1974 Supp., ch. 53, par. 39a) provides:

"Each county collector, when authorized by an ordinance passed by the county board, shall determine the total actual costs to the county of extending and collecting taxes on behalf of taxing districts within the county and charge each taxing district its proportionate share of these costs. The proportionate share of a taxing district shall be determined by applying the same percentage to the actual total cost of extension (as determined by cost analysis by an independent auditing firm) as its extension (dollar amount) bears to the total extension (dollar amount). The resultant amount shall be billed to each taxing district after tax collections have been distributed to all taxing districts within the county. For purposes of this section, 'taxing district' includes the county."

The statute required the county collector to compute the fee and bill the governmental units, therefore, the collector should have records of the amounts he billed and

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collected. Thus, there should be no need for the governmental units to set forth and prove their claims.

Very truly yours,

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