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FILE NO. S-1075

COUNTIES:
County Board Budget -
Power of County Board
to Limit State's Attorney's
Budget

Honorable Michael K. Grabowski
State's Attorney of Perry County
Courthouse
Pinckneyville, Illinois 62274

Dear Mr. Grabowski:

This is in response to your letter concerning the county board's power to limit your budget. You state that the county board disapproved your proposed budget for fiscal year 1975 - 1976 and appropriated a lesser amount of money than that which you requested. The effect of the county board's action was to eliminate proposed salaries for an Assistant State's Attorney and a clerk-secretary. You ask whether the county board acted improperly in reducing your proposed budget and if so, what remedies are available.

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Section 1 of "AN ACT in relation to the budgets of counties, etc." (Ill. Rev. Stat. 1975, ch. 34, par. 2101) authorizes the county board to adopt the county's budget. Section 2 of the Act (Ill. Rev. Stat. 1975, ch. 34, par. 2102) requires the county board to make a detailed itemization of estimated expenditures and appropriations for the pertinent fiscal year. Section 4 of the Act (Ill. Rev. Stat. 1975, ch. 34, par. 2104) prohibits expenditures in excess of the annual budget adopted by the county board. The last sentence of section 4 of the Act also provides "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".

It is evident that the county board has the ultimate power to determine the amount of county funds to be expended and who shall expend any given amount. The expenditure of county funds by the State's Attorney is limited to the amount appropriated to him by the county board.

You cite section 5a of "AN ACT in regard to Attorneys General and State's Attorneys". (Ill. Rev. Stat. 1975, ch. 14, par. 5a.) Section 5a states:

"The State's Attorney shall control the internal operations of his office and procure the necessary equipment, materials and services to perform the duties of his office.

* * *

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You state that the absence of any language to the effect that these powers are subject to budgetary limitations imposed by the county board should be construed to mean that the State's Attorney may determine his budget without being subject to budgetary limitations imposed by the county board. I am unable to agree with this conclusion. Any such language would only be a reiteration of section 4 of "AN ACT in relation to the budgets of counties, etc." (Ill. Rev. Stat. 1975, ch. 34, par. 2104) which prohibits expenditures which are either unauthorized by the county board or in excess of the amount appropriated to the State's Attorney by the county board. Since there is no need for such language, the silence of the General Assembly on this point in section 5a should not be construed as a manifestation of legislative intent to deny the county board's control over the amount of county funds which may be spent by the State's Attorney. To the contrary, any powers granted to the State's Attorney under section 5a are still circumscribed to the extent of budgetary limitations which the county board imposes through its budget.

Finally, section 5a finds its parallel in the virtually identical language of section 4.1 of "AN ACT to revise the law in relation to county treasurer", and not in section 4.4 of the

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same Act, as you suggest. (Ill. Rev. Stat. 1975, ch. 36, pars. 4.1 and 4.4.) Therefore, the absence of the phrase "subject to budgetary limitations established by the county board" in section 5a of "AN ACT in regard to Attorneys General and State's Attorneys" does not lead to the conclusion that the State's Attorney's budget is free of such limitation.

With regard to the budget item representing the salary for an Assistant State's Attorney, section 2 of "AN ACT fixing and providing for the payment of the salaries of state's attorneys and their assistants, etc." (Ill. Rev. Stat. 1975, ch. 53, par. 18) is particularly applicable. It states:

"§ 2. Where assistant State's Attorneys are required in any county, the number of such assistants and the salaries to be paid such assistants shall be determined by the board of county commissioners or supervisors, as the case may be, and the salaries of such assistants shall be paid out of the county treasury in quarterly annual installments, on the order of the county board on the treasurer of said county. Such assistant State's Attorneys to be named by the State's Attorney of the county, and when so appointed shall take oath of office in like manner as State's Attorneys, and shall be under the supervision of the State's Attorney."

In my opinion No. S-567 (1973 Ill. Att'y. Gen. Op. 21) I held that, while the State's Attorney makes the actual appointment of his assistants, this section clearly provides that the county board has the power to determine the

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number of Assistant State's Attorneys to be employed by the county as well as their salaries. The Illinois Supreme Court has construed this section as authority for the county board to determine when and how many Assistant State's Attorneys may be required by the county and to provide for their compensation. People v. Moretti, 415 Ill. 398; People v. Hanson, 290 Ill. 370.

Besides discretion to determine the number and salaries of Assistant State's Attorneys for the county, the county board possesses the power to manage the county funds. (Ill. Rev. Stat. 1975, ch. 34, par. 403.) The salary of the Assistant State's Attorney is paid from the county treasury. (Ill. Rev. Stat. 1975, ch. 53, par. 18.) It therefore follows that in the budgeting of county funds, the county board may exercise the power to limit the number and salaries of Assistant State's Attorneys for Perry County, and may thereby impose budgetary constraints in this respect.

For the foregoing reasons I conclude that the county board acted within its power in decreasing the amount of your proposed budget and appropriating a reduced sum for your office. The county board, with its ultimate power to budget county funds, has broad discretion in deciding the amount of funds to be appropriated and by whom they will be spent. The county board

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exercised this power in decreasing your requested budget. Pursuant to section 2 of "AN ACT fixing and providing for payment of the salaries of state's attorneys and their assistants, etc." (Ill. Rev. Stat. 1975, ch. 53, par. 18), the county board is specifically authorized to limit the number and salaries of Assistant State's Attorneys and therefore the denial of this particular item is within its power. The incidental elimination of the proposed salary for a clerk secretary, is the result of the county board's decision not to appropriate that added amount to your budget.

You ask what remedy is available if the county board acted improperly. Since the county board has authority over the budget of the State's Attorney, the county board did not act improperly merely in exercising that authority. There may be some basis for saying that a county board has abused its discretion if it reduces a budget to an unreasonable amount. This, of course, is a factual question on which I could not advise you.

If you believe that the board has abused its discretion, mandamus would be one proper remedy. The remedy of mandamus will lie to prevent a clear abuse of discretion by public officers in the performance of their duties. This is

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an exception to the general rule that where acts and duties necessarily call for the exercise of judgment and discretion on the part of an officer, body or person at whose hands performance is required, mandamus will not lie to direct how such judgment or discretion shall be exercised or what particular action should be taken. (Lenert v. Wilson, 56 Ill. App. 2d 325; People ex rel. Collins v. Young, 83 Ill. App. 2d 312; 26 I.L.P. Mandamus, sec. 52.) I caution that mandamus is an extraordinary remedy which may be issued by the court only upon a clear showing of abuse of discretion by the county board. As stated in the case of Brown v. City of Joliet, 108 Ill. App. 2d 230 at page 236:

* * * If there is any doubt as to the propriety of the exercise of the discretion, the courts favor a denial of a writ of mandamus (MacGregor v. Miller, 324 Ill. 113, 118, 154 NE 707). In the MacGregor v. Miller case, supra the court stated that the courts are so careful of encroaching in any manner upon the discretionary powers of public officials, that if any reasonable doubt exists as to the question of discretion or want of discretion, courts will hesitate to interfere. It is likewise basic that before a writ of mandamus should issue, a petitioner must establish every material fact necessary to show the plain duty of the respondent to act as requested,

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before the courts will interfere. No intendments are indulged in to support the issuance of a writ (People ex rel. Pignatelli v. Ward, 404 Ill. 240, at 244, 88 NE2d 461).

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Very truly yours,

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