

TO:

Public Access Counselor
Assistant Attorney General Dushyanth Reddivari

RE:

2013 PAC 26053 - FOIA Request For Review – DeWitt County

DATE: October 27, 2013

This is my response to the DeWitt County Assistant State's Attorney Lars Dunn response to the FOIA request for review 2013 PAC 26053.

Response to the first paragraph.

Mr. Dunn has stated in his first paragraph that:

1. The DeWitt County Treasurer does not maintain copies of receipts in her office for the requested transactions.
2. Being a Probation Department, the transaction in question is reviewed by the judiciary, which is not a public body.
3. The DeWitt County State's Attorney's Office has no authority to require the judiciary to produce documents.

My response to these statements, are that although the County Treasurer does not maintain copies of the transactions, it is required to do so through Article VIII, paragraph 1(c) of the Illinois Constitution, which states in pertinent part:

“Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.”

Section 3a of the Local Records Act (“LRA”)(50 ILCS 205/3a) also provides:

“Reports and records of the obligation, receipt and use of public funds of the units of local government...and presented to the corporate authorities or boards of units of local governments, are public records available for inspection by the public. These records shall be kept at the official place of business of each unit of local government and school district or at a designated place of business of the unit or district.”

The credit card receipts provide documentation regarding the use of public funds of a unit of local government. The questions as I see them: Are the Probation Department receipts

and credit card statements records of the County of DeWitt, who appropriates the funds to the Probation Department, reviews the bills submitted to them (from probation department) every month, and pays the bills of the probation department through the County Treasurer after receiving approval from the county board to tender payment? Are not all receipts of bills lawfully incurred and presented for payment to the County Board and the County Treasurer subject to FOIA?

A County Board member or County Treasurer could not fully perform their fiduciary duty to the people whom they represent if they were forbidden to ask for receipts from certain departments whom they authorize funding to. I submit they are required to obtain those receipts as stated by the Constitution and the LRA. Which, *ipso facto*, “by that very act” defines them as records of the county board and treasurer’s office.

Illinois Statute, 706 ILCS 105/27.3a, states in paragraph 1 that “...*the county board may require the clerk of the circuit court in their county to charge and collect a court automation fee...provided such record keeping system has been approved for automation by the county board...*”

Further, paragraph 3 states, emphasis mine:

“With respect to the fee imposed under subsection 1 of this Section, such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and may be waived only if the judge specifically provides for the waiver of the court automation fee. The fees shall be remitted monthly by such clerk to the county treasurer, to be retained by him in a special fund designated as the court automation fund. The fund shall be audited by the county auditor, and the board shall make expenditure from the fund in payment of any cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto, provided that the expenditure is approved by the clerk of the court and by the chief judge of the circuit court or his designate.”

I will hereby claim that “personal expenses”, that are later reimbursed to the treasurer, are not “*cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto...*” and as such are not subject to “automatic” payment with verification and approval by the clerk of the circuit court and by the chief judge of the circuit court or his designee. Reading the plain language of that paragraph, the Chief Judge does not have the power nor the authority to authorize payments that do not fall under the category of “*cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto...*”, since that would in effect give him the power to authorize a violation of Article VIII, Section 1(a) of the Illinois Constitution which states that “*Public funds, property or credit shall be used only for public purposes.*” Given that scenario, the county board and county treasurer would also be put into the position of violating Article VIII, Section 1(b) by being ordered to make payments from public funds that are not authorized by law or ordinance. Any violation of the Constitution can be a predicate for charges of felony official misconduct as stated by the Illinois Supreme

Court in the case against the Mayor of Pekin, Illinois. So, again, I submit that the Judge does not have that authority and would not knowingly authorize payments under such circumstances.

Response to the second paragraph.

Mr. Dunn states, in the second paragraph, that the second claimed improper redaction is for the name and address...and that the mailing address of the credit card statement was not on the original document provided to the Treasurer's Office...and that his office shall not be adding home addresses to documents that are released.

My response follows:

The original document provided the Treasurer's Office DID have the mailing address of the credit card statement unredacted and present on that document. Proof of this can be found in the audio of the August 15, 2013, meeting where this credit card statement was discussed. A county board member questioned a charge on the statement that was annotated as "personal expenses" in the amount \$110.94.

The audio begins with a county board member asking questions about certain credit card charges, then at 8:20 in the audio, the county board member reads the mailing address on the credit card bill (after the treasurer goes and gets him a copy of the bill). He reads "*The address is David Beery, DeWitt County Probation Department...*" and the address of the DeWitt County Office Building. The county treasurer keeps avoiding a direct answer, but does admit, it is a government credit card. She admits it 4 times.

AUDIO: <http://edgarcountywatchdogs.com/wp-content/uploads/2013/08/DeWittCreditCard.mp3>

Further proof that the mailing address was originally with the statement as it was presented to the Treasurer's Office is here:

<https://dl.dropboxusercontent.com/u/24332265/DeWitt%20County%20Credit%20Card%20Info/CC%20mailing%20address.pdf>

As for Mr. Dunn's statement that his office shall not be adding home addresses to documents that are released – I agree that he should add HOME addresses to documents that are released. But the statement in question does not get delivered (or didn't at the time) to a HOME address, since 201 W. Washington Street, Clinton, Illinois is not a home address, but rather the address to the DeWitt County Offices building and is even listed on the DeWitt County website as such: <http://www.dewittcountyill.com/offices.htm>

Summary

The Treasurer is required to maintain all records relating to the obligation, receipt and use of public funds.

Credit card receipts are records pertaining to the use of public funds.

The Probation Office is a Judiciary Office, but claims for payment are sent to the Treasurer and the County Board.

This probation officer uses the credit card for personal purchases, the claim is paid by the treasurer, then reimbursement is made by the probation officer to the treasurer. This is use of public funds for nonpublic use.

The Judge and the Circuit Clerk cannot authorize payments made from public funds that are incurred in violation of the law.

The receipt, not incurred as a cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto..., is therefore not subject to the approval process. With being charged to a public credit card, or being paid by the Treasurer then reimbursed, the receipt that is now a *de facto* public record and falls under the Freedom Of Information Act and should be release to the public as it bear on the public duties of the individual that incurred the debt.

If a claim is later made, and I suspect it will be, that it is not a public credit card, but rather a private credit card, the same holds true as it was presented for payment in full, payment of the statement in full was tendered to the credit card company by the treasurer, and it is subject to FOIA. I have a copy of the check written by the Treasurer if you would like to see it.

If further communication is required, please contact me and I would be happy to provide additional information.

Thanks,

John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

217-808-2527