



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

March 19, 1993

FILE NO. 93-007.

COMPENSATION:

Salary of State's Attorney

Honorable Michael P. Coghlan
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DeKalb County Courthouse
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Honorable Dennis Doyle
State's Attorney, Monroe County
Monroe County Courthouse
Waterloo, Illinois 62298

Honorable Robert B. Haida
State's Attorney, St. Clair County
10 Public Square, 2nd Floor
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Gentlemen:

I have your letters wherein you have inquired whether a county may increase the salary of its State's Attorney beyond the level fixed in section 4-2001 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, par. 4-2001; 55 ILCS 5/4-2001 (West 1992)), if the county agrees to pay the amount of the increase

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from its funds. For the reasons hereinafter stated, it is my opinion that the county board does not possess the authority to increase the State's Attorney's salary to an amount which is greater than that fixed by law.

Section 4-2001 of the Counties Code, inter alia, fixes the salaries to be paid to State's Attorneys (except the State's Attorney of Cook County), which are based upon county population and, in certain counties, the decision of the State's Attorney to maintain or forego a private practice. Section 4-2001, also provides for State subsidies to be paid to Assistant State's Attorneys in certain counties. In addition, section 4-2001 of the Counties Code provides:

" * * *

Such salaries shall be paid to the state's attorney and the assistant state's attorney in equal monthly installments by such county out of the county treasury provided that the State of Illinois shall reimburse each county monthly from the state treasury the amount of such salary. This Section shall not prevent the payment of such additional compensation to the state's attorney or assistant state's attorney of any county, out of the treasury of that county as may be provided by law.

* * * "

(Emphasis added.)

It has been suggested that the language underscored above may authorize a county board to elect to increase the salary of the State's Attorney to an amount greater than that specified in section 4-2001, if the county pays the additional amount from county funds.

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Initially, it is clear that the phrase "as may be provided by law" in the second sentence of the quoted paragraph refers only to State statutes, and not to ordinances which may be adopted by a county. Article VII of the 1970 Constitution repeatedly distinguishes between matters for which the General Assembly shall "provide by law", and those which may be provided for by county ordinance. For example, the Constitution provides that the number of county board members "shall be fixed by ordinance within limitations provided by law" (Ill. Const. 1970, art. VII, sec 3(a)), and that any county may "elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance". (Ill. Const. 1970, art. VII, sec. 4(a).) While I have located no reported Illinois case in which the phrase "as may be provided by law" has been construed, the courts of other states generally agree that the phrase refers only to statutes, and not to ordinances or other local regulations. (Manchin v. Browning (1982), 170 W. Va. 779, 296 S.E.2d 909, 915; Trujillo v. Tanuz (App. 1973), 85 N.M. 35, 508 P.2d 1332, 1337.) Thus, this paragraph clearly predicates the payment of additional sums by counties to State's Attorneys upon the existence of a statute so providing.

Section 4-2001 does not grant to counties the power to provide compensation to State's Attorneys in addition to the total annual compensation specifically set out therein, and, at

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present, no other State statute authorizes such additional compensation. It is my opinion, therefore, that a county is not authorized to increase the salary of its State's Attorney to an amount which is greater than that provided in section 4-2001 and to pay the increased amount from the county treasury.

Further, I note that in construing a statutory provision, it is always proper to consider the course of legislation on the statute, as well as other statutes which are in pari materia, to arrive at the legislative intent. (Application of County Collector (1985), 136 Ill. App. 3d 496.) A review of the history of State's Attorney salary and fee statutes supports the construction which I believe must be given to this provision.

The paragraph in question had its genesis in section 7 of "AN ACT to fix the salaries of state officers, etc." [hereinafter the Fees and Salaries Act of 1872] (Laws 1871, p. 430 §7), which allowed to each State's Attorney a salary in the amount of \$400, to be paid quarterly by the State. That Act further provided for each State's Attorney to collect certain enumerated fees for his services. (Laws 1871, p. 420, § 8.) The antecedent of the last sentence of the above quoted paragraph of section 4-2001 appears as a proviso in section 7 of the 1872 Act, in the following language:

" * * *

* * * Provided, that the provisions of this act shall not prevent the payment of such

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additional compensation to the state's attorney of Cook county, out of the treasury of said county, as is or may be provided by law.

* * *

"

(Emphasis added.) (Laws 1871, p. 420, § 7.)

It is clear that under the Fees and Salaries Act of 1872, it was the general legislative intent for each State's Attorney to obtain his compensation from two sources: the \$400 salary payable by the State, and the fees and commissions collected in the prosecution of certain cases. (Smith v. County of Logan (1918), 284 Ill. 163, 166). With respect to Cook County, however, "AN ACT providing for the payment, by the county of Cook, of further compensation to the judges of the circuit and superior courts, and the state's attorney of said county respectively" (Laws 1871, p. 454), which became effective on the same date as the Fees and Salaries Act of 1872, provided that the State's Attorney was to be paid by Cook County, in addition to the salary paid by the State, such further compensation as would bring his total salary to \$7,000. Thus, it was provided by law, for purposes of section 7 of the Fees and Salaries Act of 1872, that the Cook County State's Attorney should receive additional compensation from the county to supplement the salary paid by the State.

An amendment to the Fees and Salaries Act of 1872 was enacted in 1903 which contained a proviso for submission to the vote of the people of the county the question of whether the

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State's Attorneys of counties of the first and second class (all counties other than Cook) should receive, in lieu of fees, a salary fixed by the county board. (Laws 1903, p. 200). In 1911, the General Assembly enacted a statute fixing the compensation of State's Attorneys to be paid by counties, and requiring that fines and fees be paid to the county. (Laws 1911, p. 347.)

It was not until 1953 that section 7 of the Fees and Salaries Act of 1872 was amended to delete the reference to Cook County in the paragraph quoted above, thus extending its application to the State's Attorney of any county. (Laws 1953, p. 880, codified at Ill. Rev. Stat. 1953, ch. 53, par. 7.) At that time, another section of the Act, the successor to the 1911 statute, continued to provide for payment of compensation by the county in addition to the salary paid by the State. (Ill. Rev. Stat. 1953, ch. 53, par. 17.)

In 1961, the language which is now the first sentence of the above quoted paragraph of section 4-2001 was added to the Act. (Laws 1961, p. 3734.) In 1965, the two sentences were combined into a separate paragraph, and specific State payments for certain Assistant State's Attorneys were added. (Laws 1965, p. 1978.) The paragraph in question has remained essentially unchanged since that time, although the section itself has been extensively amended.

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Public Act 79-811, effective September 5, 1975, combined what had theretofore been separate provisions for State and county payments to State's Attorneys into a single section having essentially the same form as current section 4-2001. (See, Ill. Rev. Stat. 1975, ch. 53, par. 7, 17.) The Act increased State's Attorneys' salaries, and provided for the State to pay two thirds and the counties one third of the total salaries. No change was made to the paragraph under consideration, which was placed after the provisions governing payments to Assistant State's Attorneys, and preceding the definitional provisions at the end of the section. The current lettering and numbering of the section was adopted in Public Act 84-1438, effective Dec. 22, 1986, which made no substantive change to the section. Finally, the section was placed in the Counties Code by Public Act 86-962, effective January 1, 1990.

From this historical review, it is clear that it was never the purpose of the quoted provision to empower counties to elect to pay State's Attorneys compensation in addition to that which was provided by statute, but only to clarify that the State salary payment was not necessarily exclusive, and that counties could be required to pay additional amounts which might be imposed by other State statutes. In the absence of an express statutory provision authorizing such payment, it is my

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opinion that section 4-2001 of The Counties Code does not
empower a county to pay additional compensation to its State's
Attorney.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL