



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS



November 20, 1991

FILE NO. 91-039

COUNTIES:

Duty of County Clerk to
Keep Records of Claims
Against the County

Honorable Charles M. Colburn
State's Attorney, Morgan County
Morgan County Courthouse
Jacksonville, Illinois 62650

Dear Mr. Colburn:

I have your letter wherein you inquire whether, notwithstanding the objection of the county clerk, the board of county commissioners may assign to an employee in its office the duty of entering all claims made upon the county treasurer into the county's computer records. For the reasons hereinafter stated, it is my opinion that the county commissioners cannot assign to other personnel a function which is delegated to the county clerk by statute.

Section 3-2013 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 3-2013) provides, in pertinent part:

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"General duties of clerk. Subject to the provisions of 'The Local Records Act', the duties of the county clerk shall be--

* * *

2nd. To keep a book in which he shall enter the number, date and amount of each order upon the county treasurer, and the name of the person in whose favor the same is drawn, and when such order is canceled, he shall note the date of cancellation opposite such entry.

* * *

Further, section 3-2003.2 of the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 3-2003.2) provides:

"Internal operations of office. The county clerk shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office."

In opinion No. S-1260, issued June 23, 1977 (1977 Ill. Att'y Gen. Op. 93), Attorney General Scott advised that these provisions prohibited a county board from contracting for data processing services for the keeping of voter registration lists and processing of county payroll checks, unless the contract was entered into pursuant to the request of the county clerk. I agree with the analysis and conclusion expressed in that opinion. Because section 3-2013 of the Counties Code clearly requires the county clerk to keep a record of each claim made upon the county treasurer, and the county clerk is granted the authority, under section 2-2003.2 of the Code, to procure the necessary equipment, materials and services to perform that

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duty, the county board of commissioners cannot provide for the performance of this function by another.

In this regard, I note that the board of commissioner's general authority to manage county funds and county business (Ill. Rev. Stat. 1989, ch. 34, par. 5-1016) and to examine and settle accounts (Ill. Rev. Stat. 1989, ch. 34, par. 5-1019) does not give it any authority over the county clerk's record keeping functions. The county board's authority to alter the power and functions of county officers is limited to those powers and functions not otherwise specifically provided for by law. (Ill. Rev. Stat. 1989, ch. 34, par. 5-1087.) The duties specifically imposed upon the county clerk by section 3-2013 of the Counties Code cannot be changed by a county ordinance for the convenience of the county board.

Similarly, the county board's authority to install a system of accounts and financial records in the offices and divisions of the county (Ill. Rev. Stat. 1989, ch. 34, par. 5-1005(16)) does not permit the county board to circumvent the clerk's record keeping functions or internal control. As I noted in opinion No. 91-011, issued March 14, 1991, with respect to the powers of the county auditor, the various sections of the Counties Code pertaining to fiscal control must be construed together in light of the general purpose of the Code and the object to be attained. Much as the county auditor's duties with respect to the expenditure of county funds are

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intended to guard against fraud by providing a check on county spending, the county clerk's duties with respect to the monitoring of claims against the county provides a check upon the county board's authority to settle such claims. Just as the county board's means of implementing its power to install a system of accounts and financial records, in counties required to have an auditor, must be through the auditor's office, the inclusion in that system of records required to be maintained by the county clerk must be done with the consent and participation of the county clerk. Although advances in technology may have made it more convenient and efficient for all such records to be kept and controlled by a single person or entity, those technological advances have not altered the right of the people, protected by statute, to the checks on the exercise of power and the making of expenditures that the participation of multiple, independently-elected officers provides.

For the reasons stated, it is my opinion that the board of county commissioners of Morgan County cannot assign the duty to log in claims upon the county treasurer to its personnel. Only the county clerk, or one designated by the clerk, may perform that function.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

June 23, 1977

FILE NO. S-1260

COUNTIES:
Management of the
County Clerk's Office

Honorable Lloyd Middleton
State's Attorney
Perry County
Pinckneyville, Illinois 62274

Dear Mr. Middleton:

I have your letter wherein you ask whether the county board of a non-home rule county has the power to contract with a private firm for the data processing of voter registration lists, county payroll checks and distribution reports for the county mobile home privilege or local services tax or, whether under section 1.2b of "AN ACT to revise the law in relation to county clerks" (Ill.

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Rev. Stat. 1975, ch. 35, par. 1.2b), the county clerk has authority to manage these three items.

It is my opinion that the county board does not have the power to regulate or contract for the three items mentioned, unless the board does so pursuant to the request of the county clerk. Section 1.2b provides as follows:

"The county clerk shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office. This amendatory Act of 1971 does not apply to any county which is a home rule unit."

This provision clearly encompasses the purchasing of a data processing service for the three items. Section 9 of "AN ACT to revise the law in relation to county clerks" (Ill. Rev. Stat. 1975, ch. 35, par. 9) provides that the county clerk shall have the care and custody of all records. This includes the voter registration lists. Section 10 of the same Act (Ill. Rev. Stat. 1975, ch. 35, par. 10) requires the county clerk to keep a record of each order upon the county treasurer. This includes the county payroll checks. Sections 5 and 6 of the Mobile Home Local Services Tax Act

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(Ill. Rev. Stat. 1975, ch. 120, par. 1205; and Ill. Rev. Stat. 1976 Supp., ch. 120, par. 1206) provide for the county clerk to keep the county mobile home privilege or local services tax records. For the county board to contract with a private firm for the data processing of the records for these three items would violate the county clerk's right to procure the necessary equipment, materials and services to perform the duties of his office, which include the keeping of the above mentioned records.

In general, a county board's authority to manage county funds and county business (Ill. Rev. Stat. 1975, ch. 34, par. 403) and its authority to alter powers and functions of county officers (Ill. Rev. Stat. 1975, ch. 34, par. 429.18) is limited to that which is not otherwise specifically provided for by law. Furthermore, section 26 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1975, ch. 34, par. 432) imposes a duty on the county board to provide and keep in repair an office for the county clerk and to provide reasonable and necessary expenses for the use of the county clerk. However, the county board establishes

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the budget of the county clerk and has control over the expenses of the office. See opinion No. S-1075, issued April 21, 1976.

Very truly yours,

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



United Counties Council of Illinois
217 East Monroe ~ Suite 101
Springfield, Illinois 62701

217-544-5585

W. Michael McCreery, Executive Director

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November 15, 2017

To: UCCI Membership

Re: *County Treasurer's Request to Takeover County Payroll Duties from Appointed County Clerk*

Issue:

May an Appointed County Clerk Agree to a County Treasurer's Request to Takeover County Payroll Duties?

Analysis:

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.¹ However, non-home-rule units are limited to those powers which are specifically conveyed by the Illinois Constitution or by statute.²

Section 2011 of the Counties Code discusses the powers of an appointed clerk, and provides, in relevant part, that "[w]henver a vacancy occurs in the office of any county clerk and the unexpired term exceeds one year, the vacancy shall be filled as provided by The Election Code by appointment of a clerk pro tempore, who shall qualify by giving bond and taking the oath as required of the county clerk, and shall thereupon perform all the duties and be entitled to all the emoluments and be subject to all the penalties appertaining to the office of county clerk until the successor of such

¹ Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (1994).

² *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (1997).

clerk is elected or appointed and qualified.”³ Thus, the fact that a county clerk is appointed and not elected for purposes of this issue is of no import as an appointed county clerk has the same duties and responsibilities as an elected county clerk.⁴

Section 2013 of the Counties Code sets forth the general duties of the county clerk. Those duties include keeping a book “in which he shall enter the number, date and amount of each order upon the county treasurer, and the name of the person in whose favor the same is drawn, and when such order is canceled, he shall note the date of cancellation opposite such entry.”⁵ In a formal opinion, the Attorney General has opined that the county clerk is statutorily required “to keep a record of each order upon the county treasurer,” and that this duty “includes the county payroll checks.”⁶ In a related informal opinion, the Attorney General opined that “the keeping of payroll records, like other records of claims against the county, falls with the statutory duties of the county clerk, and cannot be assumed by the county board.”⁷ As such, the duties of payroll processing are explicitly within those statutorily delegated to the county clerk.

Section 5-1087 of the Counties Code specifically provides that the duties, powers, and functions of county officers that are specifically imposed by law may not be altered.⁸ Simply put, where, as here, the duty sought to be delegated is imposed on the county officer by statute, it cannot be ceded to another county officer.

³ 55 ILCS 5/3-2011 (emphasis added).

⁴ 55 ILCS 5/3-2011.

⁵ 55 ILCS 5/3-2013.

⁶ Illinois Attorney General Opinion No. S-1260, pg. 2 (June 23, 1977).

⁷ Illinois Attorney General, Informal Opinion No. I-99-002, pg. 3 (January 5, 1999).

⁸ 55 ILCS 5/5-1087 (“No county board may alter the duties, powers and functions of county officers that are specifically imposed by law.”).

This office has previously and consistently opined that the delegation of payroll processing from the county clerk to the county treasurer is not recommended even if the parties were to acquiesce to such an arrangement. Indeed, we have previously advised against the delegation of any duty that is imposed on a county officer by statute as doing so would remove the safeguards that the legislature has put in place to protect against potential fraud and malfeasance with regard to the expenditure of public funds. As observed by the Attorney General, “[a]lthough advances in technology have made it more convenient and efficient for all such records to be kept and controlled by a single person or entity, those technological advances have not altered the right of the people, protected by statute, to the checks on the exercise of power and the making of expenditures that the participation of multiple, independently-elected officers provides.”⁹

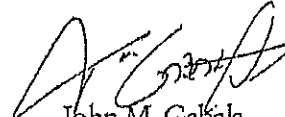
Finally, as a practical matter, we note that even if the current appointed county clerk agreed to such an arrangement, it would be temporary at best as any newly elected or appointed county clerk would possess the statutory authority to reclaim the abdicated duty from the treasurer.

Conclusion:

In sum, it is the opinion of this office that because the duties of payroll processing are within those statutorily delegated to the county clerk, they cannot be abdicated by the county clerk to the county treasurer regardless of the county board’s position on the matter.

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.


Hetman G. Bodewes


John M. Gabala

⁹ Illinois Attorney General, Informal Opinion No. I-99-002, pg. 3 (January 5, 1999); Illinois Attorney General Opinion No. 91-039, pg. 4 (November 20, 1991).

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.

Adams, Peggy

From: Adams, Peggy
Sent: Thursday, November 16, 2017 9:06 AM
To: 'mike@mmccreery.com'; 'connie@unitedcounties.com'
Cc: hbodewes@giffinwinning.com
Subject: Opinion - PLEASE ACKNOWLEDGE RECEIPT
Attachments: Op re county treasurer request to take over county payroll duties from appointed county clerk 11-15-17.pdf

This request is from Christian County on November 10.

Peggy A. Adams

Assistant to Herman G. Bodewes, Ronald W. Perlard and Robert S. Cohen
pegadams@giffinwinning.com

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August 27, 2014

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(1903-1987)

ALFRED F. NEWKIRK
(1904-1980)

JAMES M. WINNING
(1921-2013)

Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

RE: Delegation of Payroll to County Treasurer

Dear Mike:

Question:

If the county board and county clerk wish to delegate payroll to the county treasurer, may they do so without the consent of the county treasurer? May they do so with the consent of the treasurer?

Analysis:

The request for opinion was not very specific as to what specific duties "delegate payroll" encompasses. Therefore, it will be helpful to set forth the duties of the two county officers that are the subject of the questions, the county clerk and the county treasurer. Knowing the duties given to each officer by statute is important because section 5-1087 of the Counties Code states that "[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers."¹

Section 2013 of the Counties Code² sets forth the general duties of the clerk. Those duties are as follows:

¹ 55 ILCS 5/5-1087.

² 55 ILCS 5/3-2013.

(1) To act as clerk of the county board of his county and to keep an accurate record of the proceedings of said board, file and preserve all bills of account acted upon by the board, and when any account is allowed or disallowed, he shall note that fact thereon, and when a part of any account is allowed he shall note particularly the items allowed.

(2) To keep a book in which he shall enter the number, date and amount of each order upon the county treasurer, and the name of the person in whose favor the same is drawn, and when such order is canceled, he shall note the date of cancellation opposite such entry.

(3) Before any such order is delivered to the person for whose benefit it is drawn, the county clerk shall present the same to the county treasurer, who shall personally countersign the same.

(4) To keep a book, in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties and date of filing, with such reference to the number or other designation of the bond, that the same may be easily found.

(5) To keep proper alphabetical indexes of all records and papers in his office.

(6) To give any person requiring the same, and paying the lawful fees therefor, a copy of any record, paper or account in his office.

(7) Such other duties as are or may be required by law.

The county clerk also deposits all fee income in the office of the county treasurer each month; appoints deputies, assistants and personnel to assist in the performance of clerk duties; controls the internal operation of his or her office; and files a monthly report of the financial status of the clerk's office; fixes the compensation of his or her deputies and employees.³

Section 3-10005 of the Counties Code⁴ states the treasurer shall: (1) receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law; (2) appoint his deputies, assistants and personnel to assist him in the performance of his duties; and (3) is responsible for the acts of his deputies. The treasurer also has many other duties that are set forth at section 3-10005.1

³ 55 ILCS 5/3-2003.1 through 3-2003.5.

⁴ 55 ILCS 5/3-10005.

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through 10018. It should be noted that section 3-11001 through 11020 of the Counties Code contains provisions to county treasurers in counties of over 150,000.

In an informal opinion, the Illinois Attorney General opined "the keeping of payroll records, like other records of claims against the county, falls with the statutory duties of the county clerk, and cannot be assumed by the county board."⁵ As part of its analysis, the Attorney General cited to prior formal opinions in which the Attorney General had opined that the duties sought to be transferred are within those statutorily delegated to the county clerk.⁶ The Attorney General also noted that "[t]he various sections of the Counties Code pertaining to fiscal control must be construed together. The provisions of the Counties Code establish a structure of fiscal control in which various offices provide checks on others so as to guard against fraud or malfeasance. Technological advances making it more convenient and efficient to centralize control in a single person or entity have not altered the right of the people, protected by statute, to the safeguards on the exercise of power and the expenditure of public funds that the participation of multiple, independently elected officers provides."⁷

Conclusion:

Section 5-1087 of the Counties Code specifically provides that "[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law." Therefore, before delegating a duty to the county treasurer, it must first be determined whether the duty is imposed on the county clerk by law. As stated, the question posed to us did not define with specificity the "payroll" duty or duties sought to be delegated by county board and county clerk to the county treasurer. It is worth noting that Illinois Attorney General Opinion No. S-1260 states "[s]ection 10 of [An Act to revise the law in relation to county clerks] requires the county clerk to keep a record of each order upon the county treasurer. This includes the county payroll checks." If the duty sought to be delegated is imposed on the county officer by statute, it cannot be delegated.

Further, given the purpose of the sections of the Counties Code pertaining to fiscal control that the Attorney General recognized, it is our opinion the transfer of any statutorily imposed duties from county clerk to county treasurer would not be looked upon with favor, even if the county treasurer acquiesced in the delegation of duties. Therefore, we advise against a delegation of any duty that is imposed on a county officer by statute. To do so would be to take away the safeguard the legislature has created to guard against fraud and malfeasance with respect to the expenditure of public funds.

⁵ Illinois Attorney General, Informal Opinion No. I-99-002 (January 5, 1999).

⁶ Illinois Attorney General, Informal Opinion No. I-99-002 (January 5, 1999), citing Illinois Attorney General Opinion No. S-1260 (June 23, 1977) and Illinois Attorney General Opinion No. 91-039 (November 20, 1991).

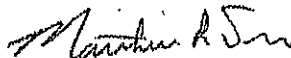
⁷ Illinois Attorney General, Informal Opinion No. I-99-002 (January 5, 1999).

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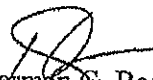
Please feel free to call if you should have any questions.

Very Truly Yours,

GIFFIN, WINNING, COHEN
& BODEWES, P.C.



Matthew R. Trapp



Herman G. Bodewes

MRT/HGB/lrg

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.