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SPRINGFIELD

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FILE NO. S-1383

PUBLIC RECORDS AND INFORMATION:
Disposal of State's Attorneys'
Records

Honorable Alan J. Dixon
Secretary of State
Springfield, Illinois 62756

Dear Secretary Dixon:

This responds to your letter wherein you ask whether State's Attorneys must obtain the approval of the Local Records Commission before disposing of their records. Section 6 of the Local Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.106) provides for the creation of two Local Records Commissions: one for counties with over 3,000,000 inhabitants (COOK) and one for the rest of the State. Since your letter does not concern Cook County, this opinion is not

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concerned with the Local Records Commission for Cook County or the officers and agencies within its jurisdiction. All references to the Local Records Commission are to the Commission with jurisdiction outside Cook County.

Section 7 of the Local Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.107) provides in pertinent part:

"Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

* * *

It is my opinion that this provision is applicable to State's Attorneys and that, as a result, State's Attorneys must obtain the approval of the Local Records Commission before disposing of their records, except as otherwise provided by law.

The State Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.4 et seq.) and the Local Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.101 et seq.) establish a system for the management and disposal of the records of State and local officials. The State Records Commission is responsible for approving the disposal of records by "public officers" of the State. Section 2 of the State Records Act (Ill. Rev. Stat.

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1977, ch. 116, par. 43.5) defines the term "public officers" as follows:

" * * *

'Public Officer' or 'public officers' means all officers of the executive branch of the State government, all officers created by the 'Civil Administrative Code of Illinois,' as heretofore or hereafter amended, and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government.

* * *

The Local Records Commission is responsible for approving the disposal of public records by local "officers". Section 3 of the Local Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.103) defines the term "officer" as follows:

" * * *

'Officer' means any elected or appointed official of a court, county, municipal corporation or political subdivision.

* * *

There is no statutory provision that authorizes State's Attorneys to establish their own procedures for disposing of all the records under their control. State's Attorneys, therefore, must dispose of their records according to either the State Records Act or the Local Records Act. State's Attorneys must be either "public officers" for the purposes of the State Records Act or "officers" for the purposes of the Local Records Act.

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There is some uncertainty regarding the status of the office of State's Attorney. The State's Attorney is a county officer in the sense that he is elected by the voters of the county to perform his duties within the county. (Cook County v. Healy (1906), 222 Ill. 310, 316; Ill. Att'y Gen. Op. 75.) However, the office of State's Attorney is not included in the county offices that are enumerated in section 4 of article VII of the Illinois Constitution. Instead, the office of State's Attorney is provided for in the Judicial Article of the Constitution. (Ill. Const. 1970, art. VI, § 19.) It has also been stated that the State's Attorney is part of the executive branch of State government. People v. Vaughn (1977), 49 Ill. App. 3d 37, 39.

The question of whether State's Attorneys are subject to the State Records Act or to the Local Records Act does not require an unequivocal statement regarding the status of the office of State's Attorney. It is my opinion that the legislature intended State's Attorneys to be considered "officers" for the purposes of the Local Records Act. This legislative intent is expressed in section 6 of the Local Records Act which requires the Governor to appoint a State's Attorney to the Local Records Commission. Section 6 provides in pertinent part:

" * * *

For all other agencies, this Act shall be administered by a Local Records Commission consisting of a chairman of a county board, who shall be chairman of the Commission, a mayor or president of a city, village or incorporated town, a county auditor, and a State's Attorney, all of whom shall be appointed by the Governor, the State archivist, and the State historian.

* * *

(Emphasis added.)

Presumably, the State's Attorney appointed to the Commission has a special understanding of the problems related to the disposal of State's Attorneys' records. It is only logical to conclude that the legislature intended the State's Attorney to make use of his special understanding during his service on the Commission. This can be accomplished by giving the Local Records Commission, rather than the State Records Commission, the responsibility for approving the disposal of State's Attorneys' records. The logic and practical advantage of having the Local Records Commission approve the disposal of State's Attorneys' records leads me to conclude that the legislature intended State's Attorneys to be considered "officers" for the purposes of the Local Records Act and that, as a result,

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State's Attorneys must obtain the approval of the Local Records Commission before disposing of their records, except as otherwise provided by law.

Very truly yours,

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