



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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September 5, 1995

FILE NO. 95-015

FEES:
Authority of Circuit Clerk to Collect
Filing Fees from State University

Honorable Michael L. Wepsiec
State's Attorney, Jackson County
Jackson County Courthouse
Murphysboro, Illinois 62966

Dear Mr. Wepsiec:

I have your letter wherein you inquire whether Southern Illinois University is required to pay filing fees in connection with forcible entry and detainer actions filed by the University with respect to University-owned housing. For the reasons hereinafter stated, it is my opinion that the circuit clerk has no authority to collect filing fees from the University with respect to the institution of any legal action.

In counties of less than 180,000 inhabitants, including Jackson County, the fees to be assessed by the circuit clerk are set forth in section 27.1 of the Clerk of Courts Act (705 ILCS 105/27.1 (West 1994)). In general, a fee has been fixed for the filing of each civil, quasi-criminal or criminal case, which must

Honorable Michael L. Wepsiec - 2.

be paid by the plaintiff. Subsection 27.1(bb) of the Clerks of Courts Act (705 ILCS 105/27.1(bb) (West 1994)), however, provides:

" * * *

(bb) Exemptions

No fee provided for herein shall be charged to any unit of State or local government or school district unless the Court orders another party to pay such fee on its behalf. The fee requirements of this Section shall not apply to police departments or other law enforcement agencies. In this Section, 'law enforcement agency' means an agency of the State or a unit of local government that is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws and ordinances. The fee requirements of this Section shall not apply to any action instituted under subsection (b) of Section 11-31-1 of the Illinois Municipal Code by a private owner or tenant of real property within 1200 feet of a dangerous or unsafe building seeking an order compelling the owner or owners of the building to take any of the actions authorized under that subsection.

* * *

"

(Emphasis added.)

Under the plain language of section 27.1, no filing fee may be charged to any unit of State government. The section does not distinguish between governmental and proprietary functions of such units of government. Consequently, the sole issue is whether Southern Illinois University constitutes a unit of State government, for purposes of section 27.1 of the Clerks of Courts Act.

Honorable Michael L. Wepsiec - 3.

The Board of Trustees of Southern Illinois University is a body politic and corporate comprised of seven members appointed by the Governor, and two non-voting student members selected by the student body. (110 ILCS 520/1, 2 (West 1994).) The expense of building, improving, repairing and supplying fuel, furniture and the necessary appliances and apparatus for conducting the school, and the salaries of the Board, superintendent, assistants, agents and employees, are charges upon the State treasury. (110 ILCS 510/15 (West 1994).) The Board can be sued only in the Court of Claims, and is subject to the State Property Control Act (110 ILCS 520/7 (West 1994)). These factors are all indicia that Southern Illinois University is an agency or unit of State government.

Moreover, our courts have held that State universities, including Southern Illinois University, are agencies of the State, for various purposes. (See, e.g., Hoffman v. Yack (1978), 57 Ill. App. 3d 744 (Southern Illinois University is an arm of the State, which can only be sued in the Court of Claims); McGuire v. Board of Regents (1979), 71 Ill. App. 3d 998, 1000-1001 (the Board is an arm or agency of the State which is immune from suit for breach of contract except in the Court of Claims); Kane v. Board of Governors (1976), 43 Ill. App. 3d 315, 318-19 (the Board is an arm of the State for purposes of coverage for workers' compensation.) In the seminal case of People ex rel.

Honorable Michael L. Wepsiec - 4.

Bd. of Trustees v. Barrett (1943), 382 Ill. 321, 343, the court concluded that although the University of Illinois is not a State agency, as such, it "functions solely as an agency of the State for the purpose of the operation and administration of the university, for the State". There is no significant difference in the form of governance or the functions performed which would differentiate Southern Illinois University from the University of Illinois, with respect to its status as an agency of the State. Therefore, based upon the statutes and cases cited above, it is my opinion that Southern Illinois University is a unit of State government, for purposes of section 27.1, which is, therefore, exempted under subsection 27.1(bb) from the payment of filing fees in State courts.

Moreover, I note that the State and its agencies are not generally subject to the payment of costs for litigating in the State courts, even when no specific statutory exemption is provided. It was on this basis that my predecessor concluded that Illinois State University and the Board of Regents were not required to pay sheriff's service fees. (1982 Ill. Att'y Gen. Op. 138.) The basis for excluding the State from payment of such costs is further discussed and analyzed in Broadway v. Secretary of State (1985), 130 Ill. App. 3d 448, 454-55. Consequently, unless and until the General Assembly expressly provides to the contrary, State universities, as agencies of the State, are not

Honorable Michael L. Wepsiec - 5.

subject to the imposition of filing fees or other fees relating
to litigation.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL