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FILE NO. S-1246

OFFICERS:
Duty of the State's Attorney
in Regard to Advising Road
Districts

Honorable Dennis J. Jacobsen
State's Attorney
Monroe County
County Court House
Waterloo, Illinois 62298

Dear Mr. Jacobsen:

I have your letter wherein you inquire whether you have a duty to act as attorney for the road districts in Monroe County on any matters other than those set forth in section 5(2) of "AN ACT in regard to attorneys general and state's attorneys". (Ill. Rev. Stat. 1975, ch. 14, par. 5(2).) For the reasons hereinafter stated, it is my opinion that a State's Attorney, in his official capacity, has no duty or authority to act as attorney for a road

Honorable Dennis J. Jacobsen - 2.

district in a commission county on any matters other than those specifically set forth in section 5(2) of the aforementioned Act.

Section 5(2) of "AN ACT in regard to attorneys general and state's attorneys" provides as follows:

"The duty of each State's attorney shall be:

* * *

(2) To prosecute all forfeited bonds and recognizances, and all actions and proceedings for the recovery of debts, revenues, moneys, fines, penalties and forfeitures accruing to the State or his county, or to any school district or road district in his county; also, to prosecute all suits in his county against railroad or transportation companies, which may be prosecuted in the name of the People of the State of Illinois.

* * *

(Emphasis added.)

The above provision clearly requires the State's Attorney to represent a road district in prosecuting forfeited bonds and recognizances and all actions and proceedings for the recovery of debts, revenues, moneys, fines, penalties and forfeitures accruing to such road districts. There is, however, no other provision requiring or authorizing the State's Attorney to act as attorney for a road district.

Honorable Dennis J. Jacobsen - 3.

The State's Attorney is charged with advising county officers in relation to matters with which the people or the county may be concerned. (Ill. Rev. Stat. 1975, ch. 14, par. 5(7).) A road district commissioner in a commission county, however, is clearly not a county officer. Road districts in commission counties are entities with statutorily granted corporate powers. (Ill. Rev. Stat. 1975, ch. 121, par. 6-107.) They are not agencies of the county in which they are located, and therefore, the State's Attorney is neither required nor authorized to advise them.

The authority of a road district in a commission county to employ legal counsel may be implied from its authority to make contracts necessary in the exercise of its powers and from its power to sue and be sued. (Ill. Rev. Stat. 1975, ch. 121, par. 6-107.) Therefore, a road district in a commission county may employ counsel should it have need of legal advice and may not look to the State's Attorney for such advice.

This opinion does not consider whether a State's Attorney may act privately or through an intergovernmental

Honorable Dennis J. Jacobsen - 4.

cooperation agreement as legal counsel to a road district.
In both situations, however, a road district would certainly
be required to pay for the services it receives.

Very truly yours,

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