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FILE NO. S-893

**COUNTY BOARD:
Temporary Transfer of Funds**

**Honorable Michael J. Henshaw
State's Attorney
Saline County
Courthouse
Harrisburg, Illinois 62946**

Dear Mr. Henshaw:

This responds to your request for an opinion as to whether a temporary transfer of funds from the county general fund to a special fund to meet the payroll of employees hired under a program established in accordance with Title II of the Comprehensive Employment and Training Act of 1973 (29 U.S.C. 841 to 851) is legal. Under the C.E.T.A. Federal funds are made available to prime sponsors to provide employment for otherwise unemployed or under-employed persons.

You state in part in your letter as follows:

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"Under the Federally funded program, the Saline County Board will transfer a certain amount of funds from the County General Fund into a special C.E.T.A. fund to be used to meet the payroll of the Title II employee participants. The primary use of the funds would be to permit the various departments of county government to meet the C.E.T.A. employee payroll on the same dates as regular county employees.

The Secretary to the Saline County Board, or such other person as the County Board shall designate, shall at the end of each pay period gather the payroll data of the C.E.T.A. employees, write the payroll checks and keep the necessary books. At the end of the month the person shall transfer the payroll data of the C.E.T.A. employees on to forms provided by the Program Agent and submit these forms for reimbursement to the Southeastern Illinois Regional Planning and Development Commission. The Program Agent shall then reimburse the County Board's C.E.T.A. fund prior to the tenth day of the following month and from time to time reconcile the County C.E.T.A. payroll records with its own."

The special fund will not create an additional expense for the county.

In order to answer your question it is necessary to consider the powers of the Board under both "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 1 ff) and "AN ACT in relation to the budgets of counties not required to pass an annual appropriation bill". Ill. Rev. Stat. 1973, ch. 34, par. 2101 et seq.

Section 25.02 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 403)

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confers power on the county board "to manage the county funds and county business, except as otherwise specifically provided". The Supreme Court in Cook County v. McCrea, 93 Ill. 236, 239, stated in regard to this power that:

* * * This can not be understood to give to county boards the absolute and unlimited power of management of county funds, where there is the absence of any specific provision of law to the contrary. It hardly means more, we think, than a power to manage the county funds and county business according to law.
* * *

This provision then does not provide the necessary authority to make a temporary transfer.

Sections 2, 3, 4 and 5 of "AN ACT in relation to the budgets etc.", provides in pertinent part as follows:

"§ 2. The annual budget shall contain:
* * *

(c) Estimates of all probable income for the current fiscal year and for the ensuing fiscal year covered by the budget, specifying separately for each of said years the estimated income from taxes, from fees, and from all other sources. * * *

(e) A schedule of proposed appropriations itemized as provided for proposed expenditures included in the schedule prepared in accordance with the provisions of paragraph (d) hereof, as approved by the board of supervisors or the board of county commissioners. Said schedule, when adopted in the manner set forth herein, shall be known as the annual appropriation ordinance. An amount not exceeding five per cent, of the total may be appropriated for contingent,

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incidental, miscellaneous, or general county purposes, but no part of the amounts so appropriated shall be used for purposes for which other appropriations are made in such budget unless a transfer of funds is made as authorized by this Act.

* * *

The budget shall classify all estimated receipts and proposed expenditures, and all amounts in the treasury of the county, under the several county funds now provided by law." (Ill. Rev. Stat. 1973, ch. 34, par. 2102.)

"§ 3. After the adoption of the county budget, no further appropriations shall be made at any other time during such fiscal year, except as provided in this Act. Transfers from one appropriation of any one fund to another of the same fund, not affecting the total amount appropriated, may be made at any meeting of the board by a two-thirds vote of all the members constituting such board, the vote to be taken by ayes and nays and entered on the record of the meeting. By a like vote the board may make appropriations in excess of those authorized by the budget in order to meet an immediate emergency." (Ill. Rev. Stat. 1973, ch. 34, par. 2103.)

"§ 4. Except as herein provided, neither the county board nor any one on its behalf shall have power, either directly or indirectly, to make any contract or do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year. * * * Except as herein provided, no contract shall be entered into and no obligation or expense shall be incurred by or on behalf of a county unless an appropriation therefor has been previously made." (Ill. Rev. Stat. 1973, ch. 34, par. 2104.)

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"§ 5. The county treasurer shall keep a separate account with each fund to show at all times the cash balance thereof, the amount received for the credit of such fund, and the amount of the payments made therefrom. The county auditor in each county under township organization containing over seventy-five thousand (75,000) inhabitants and the county clerk in each other county shall keep a similar account with each fund, and in addition shall maintain an account with each appropriation of each fund to show: (a) the amount appropriated, (b) the date and amount of each transfer from or to such appropriation and the appropriations to which or from which transfers were made, (c) the amount paid out under the appropriation, (d) the amount of outstanding obligations incurred under the appropriation, (e) the amount of the encumbered balance of the appropriations, and (f) the amount of the free balance of the appropriation." (Ill. Rev. Stat. 1973, ch. 34, par. 2105.)

These provisions do not provide explicit authority to make the proposed temporary transfer. However, the Supreme Court in Hall v. County of Cook, 359 Ill. 528 at page 540 stated that:

"The object of an appropriation bill is to enable the taxpayer to compel the application of public funds to the purposes for which they were appropriated, to prevent the application of such funds to other purposes, and to prevent the expenditure of greater sums of money than are necessary for legitimate corporate purposes.
* * *"

A temporary transfer of funds would not distort the expenditures provided for under the appropriation bill and would thus not conflict with the purpose of an appropriation bill.

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Even though a county board does not have the explicit statutory authority to make temporary transfers, a line of decisions of the Supreme Court hold that temporary transfers are not illegal. In Gates v. Sweitzer, 347 Ill. 353, the Supreme Court stated at page 359 as follows:

"Municipal officers have no right to divert moneys from one fund to another and different fund for which it was not appropriated. But the word 'divert' is used in the sense of turning such fund permanently from its purpose or the final appropriation of it to some other use. If, as counsel for appellees argue, the commissioners had a right to, and did, temporarily borrow sufficient idle bond funds or other funds for the benefit of a fund having a stated and sufficient income to re-pay the sum borrowed, as the bond fund had, and with the intention that it shall be so re-paid, such is not a diversion of funds, for the fund from which the money is taken holds the credit against bond interest and principal fund and is not depleted. * * * "

See also People ex rel. Toman v. Central Plaza Hotel Corp., 375 Ill. 144, and Town of Thornton v. Winterhoff, 406 Ill. 113.

In view of this line of cases and the fact that a temporary transfer does not conflict with the purpose of an appropriation bill, I am of the opinion that a county board has the power to make a temporary transfer of the type which is proposed.

Because of this conclusion, it is unnecessary to discuss whether the C.E.T.A. fund is part of the county general

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funds or whether the transfers authorized by "AN ACT in relation to the budgets etc.", supra, refer to transfers between funds required to be established by statute or those special items set up with another fund and also designated "fund". In this regard see Opinion No. 22 of my predecessor. (1939 Op. Atty. Gen. 85.)

It is unclear from your letter whether the Board had appropriated the funds it expects to receive under the C.E.T.A. I infer from your letter that the Board has not begun participation in the program and conclude from this that the county has not appropriated these funds. It is necessary, therefore, to point out that under provisions of "AN ACT in relation to the budgets etc.", supra, that an appropriation of these funds is necessary. I refer you to those sections which provide that the annual budget shall contain an estimate of all probable income not only from taxes and fees, but from all other sources and that the budget shall classify all estimated receipts and proposed expenditures. Until there is a valid appropriation of the funds, a temporary transfer would not be authorized.

Very truly yours,

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