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OFFICERS:
County Treasurer's
Authority to Compromise
the Interest and Penalty
on a Real Estate Tax.

Honorable Patrick Power
State's Attorney
Kankakee County
Kankakee, Illinois

Dear Mr. Power:

I have your letter wherein you request an opinion on whether the county treasurer of Kankakee County has legal authority to compromise the interest and penalty on a real estate tax bill where the issue on whether the assessment was proper was being litigated during the years when said tax and penalty were accruing, and the Supreme Court ruled that the taxes were properly assessed.

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It is my opinion that the county treasurer is not authorized to compromise the interest and penalty on a real estate tax bill in such a situation.

Section 23 of article IV of the Illinois Constitution of 1870 read as follows:

"The General Assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this state or to any municipal corporation therein."

It was generally held in a long line of cases under section 23 of the Illinois Constitution of 1870 that no officer, whether legislative, executive or judicial, could compromise or discharge any debt due the State or any of its governmental units. (In re Estate of Zagoras (1973), 11 Ill. App. 3d 355; Madison v. Reuben (1973), 10 Ill. App. 3d 16.) The Illinois Constitution of 1970 contains no provision similar to section 23. The deletion of this section makes it possible for the legislature to pass enabling legislation authorizing the compromise of a debt or obligation; however, the legislature has not done so and without an enabling grant of power the county treasurer cannot compromise the debt.

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Kankakee County is a non-home rule unit of local government and as a result, its powers are limited by section 7 of article VII of the Illinois Constitution of 1970 to those granted therein and otherwise granted by law. Section 4d of article VII of the Illinois Constitution of 1970 reads as follows:

" * * *
(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.
* * * "

"AN ACT to revise the law in relation to county treasurer" (Ill. Rev. Stat. 1975, ch. 36, par. 1 et seq.) gives the powers, functions and duties of the county treasurer. There is no provision authorizing the county treasurer to compromise the penalty and interest of a proper assessment for real estate taxes.

Therefore, it is my opinion that the county treasurer of Kankakee County has no authority to compromise the interest

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and penalty on the real estate tax bill even where the issue of the taxpayer's exemption from tax was in litigation during the years the taxes, interest and penalties accrued.

Very truly yours,

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