



WILLIAM J. SCOTT  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

February 2, 1978

FILE NO. S-1336

FEES:  
County Clerks' Fees for Filing  
Nominating Petitions

Honorable Bernard C. Carey  
Cook County State's Attorney  
Richard J. Daley Center  
Room 500  
Chicago, Illinois 60602

Dear Mr. Carey:

You have asked for amplification of matters discussed in my Opinion S-1271 dealing with county clerks' fees for filing documents. This opinion stated that the law required such clerks to receive fees for filing statements of economic interest under the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1975, ch. 127, par. 601-101 et seq.) and reports of political committees under The Election Code. (Ill. Rev. Stat. 1975, ch. 46, par. 9-1 et seq.) You ask whether such fees should also be collected for filing nominating petitions under

Honorable Bernard C. Carey - 2.

the Election Code (Ill. Rev. Stat. 1975, and 1976 Supp., ch. 46, pars. 7-12 and 10-6), whether a charge should be made per page or per document, and what are the consequences of failing to collect the fee.

Initially, it should be noted that Illinois statutes establish two sets of fees for county clerks, one applying to Cook County and the other to all other counties. Opinion S-1271 dealt with counties of the first and second classes, which under Section 13 of "AN ACT concerning fees and salaries, etc." (Ill. Rev. Stat. 1975, ch. 53, par. 30) include all counties with up to one million inhabitants. Counties with more than one million inhabitants are of the third class under the same statute.

Section 18 of the "ACT concerning fees and salaries" (now in Ill. Rev. Stat. 1976 Supp., ch. 53, par. 35), dealing with fees for county clerks in counties of the first and second classes, set a fee "For filing any paper not herein otherwise provided for" at least as early as 1911. (Laws 1911 at 341, 343.) The amount of the fee is presently \$1. Similarly, section 3 of "AN ACT to provide for the fees of the Sheriff, Recorder of Deeds, and County Clerk in counties of the third class" (now in Ill. Rev. Stat. 1976 Supp., ch. 53, par. 73) has set a fee "For filing

Honorable Bernard C. Carey - 3.

papers in his office" since at least 1905. (Laws 1905 at 261, 263.) The amount of this fee is now 25 cents.

Opinion S-1271 concluded, since the statutes make no special provision for fees for filing statements of economic interest or reports of political committees, that a county clerk should charge the catch-all fee described above; that would be 25 cents in Cook County and \$1 elsewhere. The reasons requiring this conclusion apply with equal force to the filing of nominating petitions under the Election Code. The fee statutes are clear and unambiguous; since they set fees for filing "papers" or "any paper not herein otherwise provided for," and the law makes no other provision on the subject, the fees they set should be charged.

It may be doubted whether the General Assembly intended statements of economic interest, reports of political committees or nominating petitions to incur the filing fees cited above. Such documents are filed for a public purpose and benefit the public at large, not merely the persons filing. Furthermore, officers, candidates and political committees at the State level are not required to pay any fees upon filing these documents

Honorable Bernard C. Carey - 4.

with the State Board of Elections or the Secretary of State. See Sections 7-12, 8-9, 9-10, and 10-6 of the Election Code (Ill. Rev. Stat. 1975 and 1976 Supp., ch. 46, pars. 7-12, 8-9, 9-10, and 10-6), Section 10 of "AN ACT concerning fees and salaries" (Ill. Rev. Stat. 1975, ch. 53, par. 24), and Section 4A-106 of the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1975, ch. 127, par. 604A-106). However, the statutes as written clearly require payment of the fees.

You have asked whether a "paper" within the meaning of the clerk's fee statutes means each page or a whole document. The United States Supreme Court considered this question in United States v. Barber (1891), 140 U.S. 164, 168, which was a suit to recover a clerk's fees. The court there stated:

" \* \* \* Section 828 allows 'for filing and entering every declaration, plea or other paper, 10 cents.' Each deposition is not necessarily a 'paper' within the meaning of this clause. If two or more depositions are embraced in a single paper, or a series of sheets are attached together, they form but a single paper, within the meaning of the law. \* \* \*"

Similarly, the Kansas Supreme Court in Graham v. Corporon (1966), 196 Kan. 564, 413 p. 2d 110, 113-115, after considering several

Honorable Bernard C. Carey - 5.

legal definitions of the term "paper", held that a "paper" within the meaning of a statute of that State requiring each "paper" of petition signatures to be authenticated by oath, meant a sheaf of papers. Therefore, the 25-cent charge should be made for filing a single document, even though it consists of numerous pages, if they are attached together as a whole. This should also answer your question of whether the charge should be per candidate or per petition.

Several of your questions deal with whether the county clerk may and should refuse to file a document not accompanied by the proper fee. It is the law in Illinois that a clerk or similar official may refuse to file a document or perform similar service for which a fee is required, if not paid the proper fee. (People ex rel. Thomas v. Rockwell (1839) 3 Ill. 3,4; People ex rel. Maus v. Harlow (1862), 29 Ill. 43, 44; Kennedy v. PUC (1919), 286 Ill. 490, 493; Newby v. Yellin (1930), 257 Ill. App. 526, 528 (as to justice of the peace); Oil Well Supply Co. v. Wickwire (E.D. Ill.1943), 52 F. Supp. 921 (cited in Greer v. Ludwick (1968), 100 Ill. App. 2d 27, 40.) The General Assembly has explicitly endorsed this principle in the Act setting

Honorable Bernard C. Carey - 6.

fees for clerks in counties of the first and second classes; the last sentence of that section (Ill. Rev. Stat. 1975, ch. 53, par. 35) states:

" \* \* \* The county clerk in all cases may demand and receive the payment of all fees for services in advance so far as the same can be ascertained. \* \* \*"

The statement in the cases and the statutes that a clerk "may" demand payment in advance obviously implies that if the clerk waives this right and files anyway, the document will have been properly filed.

You have asked what would be the consequences if the clerk files without recovering the fee. Both the Illinois Constitution of 1970, in article VII, section 9(a), and section 1.2d of "AN ACT to revise the law in relation to county clerks" (Ill. Rev. Stat. 1975, ch. 35, par. 1.2d) require county clerks to deposit all fees with the county treasurer. In addition, section 35 of "AN ACT concerning fees and salaries, etc." (Ill. Rev. Stat. 1975, ch. 53, par. 54) makes a clerk who fails to pay over "the fees of the office" guilty of a Class A misdemeanor.

Honorable Bernard C. Carey - 7.

In the absence of specific facts, however, I am unable to express a definite opinion on whether these provisions would apply to a county clerk who in good faith fails to demand the fee in advance.

Very truly yours,

A T T O R N E Y   G E N E R A L