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SPRINGFIELD

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FILE NO. S-1340

CONSTITUTION:
Constitutionality of County
Tax to Cover Cost of Tax
Collection

Honorable William P. Strange
State's Attorney
Lawrence County Courthouse
Lawrenceville, Illinois 62439

Dear Mr. Strange:

I have received your letter in which you ask for my opinion as to the validity of Public Act 80-1056, which amended section 25.05 of, and added section 25.05-5 to "AN ACT to revise the law in relation to counties". (Ill. Rev. Stat. 1975, ch. 34, par. 1 et seq.) In particular, you question whether section 25.05-5 violates the restrictions imposed by section 9(a) of article VII of the Illinois Constitution of 1970.

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Section 25.05-5 grants to counties with a population of less than 1,000,000 the power:

" * * * [T]o levy and collect annually a tax of not to exceed .025% of the value, as equalized or assessed by the Department of Local Government Affairs, of all the taxable property in the county for the purpose of paying the cost to the county of extending and collecting taxes. Such tax shall not be included within any statutory limitation of rate or amount for other county purposes, but shall be excluded therefrom and be in addition thereto and in excess thereof.

* * *

Section 9(a) of article VII of the 1970 Constitution provides:

"(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes.

* * *

In a previous opinion No. S-569 (1973 Ill. Att'y. Gen. Op. 22) I discussed the purposes of the first two sentences of section 9(a). Under the Illinois Constitution of 1870, certain county officers were allowed to compensate themselves, their employees, and to pay their office expenses

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from fees collected. In my previous opinion I stated that the purpose of the first two sentences of section 9(a) was to make it crystal clear that officers of units of local government could not compensate themselves, their employees, nor pay their office expenses from fees collected. All fees collected had to be paid over to the county treasurer. Section 25.05-5 does not authorize direct compensation of officers of units of local government from the fees collected and therefore does not violate the restrictions imposed by the first two sentences of section 9(a).

In City of Joliet v. Bosworth (1976), 64 Ill. 2d 516, the Illinois Supreme Court took up the question of the meaning of the third sentence of section 9(a). In that case the constitutionality of section 21a of "AN ACT concerning fees and salaries and to classify the several counties of the State with reference thereto" (Ill. Rev. Stat. 1975, ch. 53, par. 39a) was brought into question. That statute provided that counties could bill each taxing district within the county for its proportionate share of the actual costs incurred by the county in extending and collecting taxes on behalf of all taxing districts. It was alleged that this

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grant of authority was in violation of the restrictions imposed by the third sentence of section 9(a). The Supreme Court, at page 524, agreed. It said:

" * * *

The debates upon the purpose of this third sentence of section 9(a) in our opinion clearly indicate the intent to preclude counties from seeking, in any form, reimbursement from the various taxing bodies for county services rendered in the collection of taxes. * * *

* * *

(Emphasis added.)

Section 25.05-5 does not, in any way, authorize counties to seek reimbursement from the various taxing bodies for county services rendered in the collection of taxes. It authorizes certain counties to levy and collect a tax for the purpose of paying the cost to the county of extending and collecting taxes. This kind of tax, according to the court, was specifically contemplated by the delegates to the Constitutional Convention. On page 525 the court states:

" * * *

It is quite apparent from the discussions that the delegates to the convention realized that elimination of the compensation to counties for the tax collection services rendered other taxing bodies could well result in overall tax increases, for counties would then be required to levy additional amounts to pay tax extension and collection costs while other taxing districts

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which formerly paid for those services would still be free to levy taxes up to their maximum limits.

* * *

(Emphasis added.)

Therefore, it is my opinion that section 25.05-5 does not violate the restrictions imposed by section 9(a) of article VII of the Illinois Constitution of 1970.

Very truly yours,

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