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SPRINGFIELD

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FILE NO. S-468

CONSTITUTION OF 1970:
Transition Schedule

FEES AND SALARIES:
County Officers

Honorable Henry D. Sintzenich
State's Attorney
McDonough County
Macomb, Illinois 61456

Dear Mr. Sintzenich:

I have your recent letter wherein you state:

"In your opinion NP-396 dated February 2, 1972, you stated that the County Treasurer 'must remit . . . 100% of inheritance tax collected on or after December 1, 1971, to the State Treasurer'.

The question left unanswered in the opinion is, since Section 21 of 'An Act to tax gifts, legacies, inheritances, * * * ' provides for the payment of the Treasurer's 4% into the County

Treasury, does this expose the County Treasurer to a possibility of a multiple claim against her both from the County and the State seeking the same 4% or does Section 9 of the Transition Schedule of the 1970 Constitution effectively repeal Section 21 referred to herein?

I would appreciate your opinion as soon as possible so that the County Treasurer can remit the funds to the appropriate governmental agency."

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

"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."

Section 9 of the Transition Schedule of the Illinois Constitution of 1970 provides in part:

"The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. * * *"

Section 21 of "An Act to tax gifts, legacies, inheritances, * * * " provides:

"The treasurer of each county shall retain and pay into the county treasury 4% on all taxes paid and accounted for by him under this Act, in full for all services and expenses rendered, incurred or paid by the county or any of its officers, agents, or employees, in collecting and paying the same." Ill. Rev. Stats. 1971, ch. 120, par. 394.

In my opinion NP-396, dated February 2, 1972, I stated that the county treasurer was subject to section 9(a) of article VII of the Illinois Constitution of 1970 and, therefore, could not retain the fee provided in section 21 of "An Act to tax gifts, legacies, inheritances, * * *." (Ill. Rev. Stats. 1971, ch. 120, par. 394.) I concluded that the county treasurer under section 20 of the Act must remit 100% of the funds collected on or after December 1, 1971, directly to the State Treasurer.

You specifically ask if section 9 of the Transition Schedule effectively repeals section 21 of the Act. Section 9 provides, in part, that "All laws * * * not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force." Since section 21 of the Act is inconsistent with section 9(a) of article VII of the Illinois Constitution of 1970, it no longer "remains in force."

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Therefore, the county treasurer is not liable to the county for 4% of the funds collected under this Act on or after December 1, 1971.

Very truly yours,

ATTORNEY GENERAL