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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 22, 1981

FILE NO. 81-043

OFFICERS:
Duties of County Clerk, Clerk
of Circuit Court and County
Treasurer With Respect to
Portion of Fees to be Paid Into
Domestic Violence Shelter and
Service Fund

Honorable Carl E. Hawkinson
State's Attorney
Knox County
Courthouse
Galesburg, Illinois 61401

Dear Mr. Hawkinson:

I have your letter in which you inquire concerning the application of Public Act 82-645, effective January 1, 1982, which provides for the establishment of a Domestic Violence Shelter and Service Fund and which requires that portions of marriage license fees collected pursuant to section 18 of "AN ACT concerning fees and salaries, etc." (Ill. Rev. Stat. 1979, ch. 53, par. 35, as amended by P.A. 82-645) and section 3 of "AN ACT to provide for the fees of the sheriff, recorder of

PROXY

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deeds and county clerk in counties of the third class" (Ill. Rev. Stat. 1979, ch. 53, par. 73, as amended by P.A. 82-645), and portions of filing fees in dissolution of marriage cases collected pursuant to sections 27.1 and 27.2 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1980 Supp., ch. 25, pars. 27.1, 27.2, as amended by P.A. 82-645), be deposited in such fund. You ask what mechanism is to be used by the county clerk and circuit clerk for the transfer of the required amounts into the fund. For the reasons hereinafter stated, it is my opinion that the amounts in question must be deposited with the county treasurer who in turn must pay them into the Domestic Violence Shelter and Service Fund in the State treasury in accordance with the terms of section 1.2f of "AN ACT to revise the law in relation to circuit clerks" (to be codified Ill. Rev. Stat., ch. 35, par. 1.2f).

You point out that sections 4 and 5 of Public Act 82-645 establish a \$25 fee for the county clerk for the issuance of a marriage license, \$10 of which is required to be paid into the Domestic Violence Shelter and Service Fund, and section 6 of the Act establishes a \$45 fee for the clerk of the circuit court for marriage dissolution cases, \$5 of which is required to be paid into the Domestic Violence Shelter and Service Fund. There is no mechanism provided in either section 4, 5 or 6 for the transfer of the fees in question to the fund.

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Section 1.2f of "AN ACT to revise the law in relation to circuit clerks" (to be codified Ill. Rev. Stat., ch. 35, par. 1.2f), provides as follows:

"Pursuant to 'An Act in relation to domestic relations and domestic violence shelters and service programs', enacted by the 82nd General Assembly, the county clerk shall deposit in the Domestic Violence Shelter and Service Fund monthly by the 10th day of the month following, certain fees derived from marriage licenses and marriage dissolution cases."

There are two potential problems with the aforementioned language. Firstly, on its face it directs the county clerk to deposit not only the appropriate portion of marriage license fees, which he collects, but also the appropriate portion of fees in marriage dissolution cases, which he does not collect, into the Domestic Violence Shelter and Service Fund. Secondly, if the provision were given a plain meaning, it would run counter to express requirements in both subsection 9(a) of article VII of the Illinois Constitution of 1970 and section 2 of "AN ACT to provide for the timely deposit of fees".

Section 1.2f appears in the Act governing circuit clerks but it purports to give direction to the county clerk. Reference to the circuit rather than the county clerk may have been the intention of the provision, but even in that circumstance there would have been ambiguity. In any event, I do not read the provision as requiring the direct deposit of fees by either clerk into the fund. The only direct, clear and enforceable mandate

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of the provision is that the funds be "deposited monthly by the 10th of the month following" into the Domestic Violence Shelter and Service Fund. This construction is a proper one in this particular circumstance since, in adhering to the rule that the spirit of the law is especially applicable where adherence to the letter would result in absurdity or defeat the purpose of the statute, words of a statute may be modified or rejected and others substituted. People ex rel. Simpson et al. v. Funkhouser (1944), 385 Ill. 396, 403-404.

Subsection 9(a) of article VII of the Illinois Constitution of 1970 provides in pertinent part:

"(a) * * * Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. * * * "

Subsection 9(a) requires county officers to deposit all fees, upon receipt, with the county treasurer. In addition, the deposit of fees collected by county officers and the clerks of the circuit court, is governed by sections 1 and 2 of "AN ACT to provide for the timely deposit of fees, etc." (Ill. Rev. Stat. 1979, ch. 85, par. 721 et seq.), section 2 of which (Ill. Rev. Stat. 1979, ch. 85, par. 722) provides, in part:

"All elected or appointed officials of units of local government, and clerks of the circuit courts, authorized by law to collect fees which collection is not prohibited by Section 9 of Article VII of the Constitution, shall deposit all such collected fees upon receipt with the county treasurer or treasurer of such other unit of local government, as the case may be; * * * "

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The above provision requires both county officers and clerks of the circuit court to deposit fees collected by them with the county treasurer. (See, 1977 Ill. Att'y Gen. Op. 159.) It must be presumed that the General Assembly, when it enacted Public Act 82-645, had full knowledge of subsection 9(a) of article VII and section 2 of "AN ACT to provide for the timely deposit of fees, etc.". See, Gaither v. Lager (1954), 2 Ill. 2d 293, 301; People v. Kelly (1934), 357 Ill. 403, 413.

The spirit and intent of Public Act 82-645 is that a portion of the marriage license fees, and a portion of the fees for dissolution of marriage in all counties, be paid into the Domestic Violence Shelter and Service Fund in the State treasury. Since the General Assembly is presumed to know that existing law requires fees for marriage licenses and dissolution of marriage to be deposited with the county treasurer, it is reasonable to construe Public Act 82-645 to mean and intend that such fees continue to be deposited with him. The county treasurer, upon receipt, would then be required to pay the designated portion of these fees into the Domestic Violence Shelter and Service Fund.

The above construction of Public Act 82-645 is one which renders the Act constitutional and fully effectuates the intent of the General Assembly. In The People v. Thillens (1948), 400 Ill. 224, the court, in construing certain language of the Community Currency Exchange Act (Ill. Rev. Stat. 1947, ch. 16 1/2,

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pars. 31-56), stated at pages 231-232:

" * * *

In the construction of a statute the law requires that it be given a reasonable interpretation. Under this rule, statutes are to be construed according to their intent and meaning, and a situation that is within the object, spirit, and meaning of the statute is regarded as within the statute, although not within the letter. * * *

It has also been frequently held that where the language of the statute employed admits of two constructions, one of which makes the enactment absurd, if not mischievous, while the other renders it reasonable and wholesome, the construction which leads to an absurd result will be avoided. (People ex rel. Prindable v. New York Central Railroad Co., 397 Ill. 50; In re Estate of Abell, 395 Ill. 337; City of Elmhurst v. Buetgen, 394 Ill. 248.) And it is also a canon of statutory construction that a law will be construed, if possible, in such a way as to render it constitutional if it can be done. Great United Mutual Benefit Ass'n v. Palmer, 358 Ill. 276; Illinois Bell Telephone Co. v. Ames, 364 Ill. 362; Peoples Gas Light and Coke Co. v. Slattery, 373 Ill. 31.

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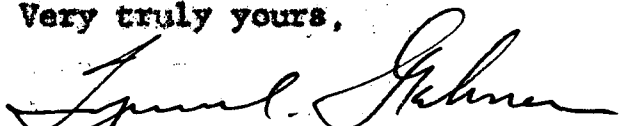
What is important in the present circumstance is the effectuation of the intent of the General Assembly that a Domestic Violence Shelter and Service Fund be established and that portions of certain fees be deposited into that fund. The General Assembly's intent is fully effectuated by the use of the ordinary mechanism for deposit of funds by county officers and clerks of courts.

Therefore, I am of the opinion that your county clerk, upon receipt of a \$25 marriage license fee, should deposit the entire fee with the county treasurer and that the circuit court clerk, upon receipt of a \$45 filing fee in dis-

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solution of marriage cases, should deposit the entire fee with the county treasurer. The county treasurer, in turn, must then pay \$10 of each marriage license fee and \$5 of each marriage dissolution fee into the Domestic Violence Shelter and Service Fund in the State treasury.

Very truly yours,


ATTORNEY GENERAL