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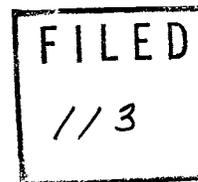
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July 22, 1985

OPINION LETTER NO. 113-85

The Honorable William J. Icenogle
Prosecuting Attorney, Camden County
Post Office Box 697
Camdenton, Missouri 65020



Dear Mr. Icenogle:

This letter is in response to your question asking:

Pursuant to Section 136.150 RSMo, must the County Commission of a 3rd Class County set aside one-half of the 20% delinquent tax collection fee in a separate account for the unrestricted, discretionary use of the County Prosecuting Attorney.

Section 136.150, RSMo Supp. 1984, states:

The attorney general shall furnish legal advice to the director of revenue. He shall commence legal proceedings and conduct legal actions for the collection of delinquent taxes, licenses and fees, referred to him for collection by the director of revenue. The state director of revenue shall have the power to call upon circuit attorneys or prosecuting attorneys for assistance in the collection of delinquent taxes, licenses and fees; provided, however, that such taxes, licenses and fees collected in any proceeding or action by the attorney general or by any circuit or prosecuting attorney shall be paid to and received by the director of revenue; except that, the state shall pay, from funds appropriated by the general assembly for such purpose, a collection fee of twenty percent of the delinquent tax, license, or fee recovered by the circuit attorney

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or prosecuting attorney. The collection fee shall be deposited in the county treasury, with one-half of such collection fee being designated for the use of the prosecuting or circuit attorney's office and one-half of such fee to be expended as the county shall determine.

County funds may be budgeted as a matter of law if a statute or other authority imposes a mandatory, nondiscretionary duty on the county to allocate those funds in a particular manner. State ex rel. Robb v. Poelker, 515 S.W.2d 577, 579 (Mo. banc 1974); Opinion Letter No. 242, Peterson, 1980, copy enclosed. We believe that the one-half of the delinquent tax collection fees designated for use by the prosecuting attorney's office are allocated to the prosecuting attorney's office as a matter of law if such funds are not actually budgeted by the county commission. Generally, though, the county budget will include funds that are budgeted as a matter of law. See Section 50.550, RSMo 1978 (county budget presents a complete financial plan for the county).

Very truly yours,



WILLIAM L. WEBSTER
Attorney General