

ILLINOIS POLLUTION CONTROL BOARD
June 3, 1993

SANGAMON COUNTY,)
)
 Complainant,)
)
 v.) AC 92-37
) Docket B
 GERALD B. MILLER,) (Administrative Citation)
) (SCDPH 92-AC-12)
 Respondent.)

CONCURRING OPINION (by J. Anderson):

I have no argument at all per se with the notion that, if a violator must pay the State for the hearing costs incurred by the Board and the Agency, then Sangamon County ought to be refunded for its administrative citation hearing costs when it acts in the Agency's stead. My problem is that, given that there is no specific mention of local government hearing costs anywhere in the highly-detailed administrative citation provisions of the Environmental Protection Act (Act), the Board's statutory authority to order the payment and deposit of such costs is at best implied.

I would be far more comfortable if the statute were amended to be specific regarding payment of local government hearing costs. Extra support seems especially prudent when dealing with monies. I have difficulty interpreting the Agency's statutory authority, contained in Section 4(r) of the Act, to delegate its functions to a local government as necessarily implying that a local government so delegated is then on the same footing as the Agency with regard to hearing costs. I recognize that "stretching" an interpretation of the statute to reach a desired, indeed common sense, outcome, as we have in this case, is not without merit. However, use of the delegation agreement as our authority is particularly awkward in the administrative citation statutory setting; in contrast to the Board's almost unfettered statutory discretion in making determinations in a "regular" enforcement action, the administrative citation provisions in the Act circumscribe the Board's discretion throughout, and does so with great specificity. Unfortunately, one exception concerns the question of local government hearing costs.

Section 42(b)(4) of the Act is the only section where administrative citation hearing costs are addressed. That section states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) or (q) [sic; should be (o)

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or (p)] of section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund,; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government. (Emphasis added.)

As is evident from the above, Board and Agency penalties, but not costs, are specified for deposit into the Environmental Protection Trust Fund. The Board is thus required to deposit hearing costs into the State's general revenue fund, pursuant to the State Finance Act. The State Finance Act defines the general revenue fund as: "All money, belonging to or for the use of the State, paid into the treasury thereof, not belonging to any special fund in the State treasury, shall constitute the general revenue fund". (30 ILCS 105/4.)

The first obvious question is whether the statute allows the Board to order the violator to pay local government hearing costs, as well as those of the Board and the Agency. Even if one answers "yes" to this question, it raises another question: whether the repayment of hearing costs incurred by a local government - whose authority to conduct its administrative citation activities is derived from the Act rather than local ordinance - would belong to or be for the use of the State, and thus should be deposited in the general revenue fund. Even if one answers "no" to the this question, then another question arises: where does the statute authorize the Board to order the deposit of such costs into a local fund designated by unit of local government. Unfortunately, there is no specific language in the Act that answers either question.

Further viewing this issue from a statutory construction perspective, it is difficult to find much implied "wobble-room" when looking at Section 42(b)(4) where:

- a) there is no mention of local government hearing costs when there is specific authorization to impose Agency and Board hearing costs;
- b) there is no designation as to where such local government costs are to go when the Agency's and Board's costs are to be deposited into the general revenue fund pursuant to the State Finance Act; and
- c) there is specific mention of units of local government regarding penalties in Section

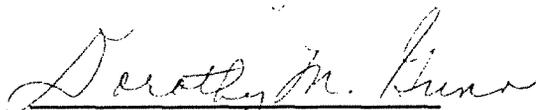
42(b)(4) where in the same section there is silence regarding local government costs.

In my view, adding the phrase "or a unit of local government" to the language in Section 42(b)(4) and specifying where the monies are to be deposited would cure the problem.

It is for these reasons that I respectfully concur.


Joan G. Anderson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 9th day of July, 1993.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board