

## NEW LAW REQUIRES CLERKS TO “ATTEST” ALL TOWNSHIP PAYMENTS

On August 19, 2018, Governor Rauner signed Senate Bill 2923 into law (now Public Act 100-0983). Starting January 1, 2019, this new law requires Township Clerks to “attest” the signatures of Supervisors on **all** payouts from the Township and Road District treasury (including payments for cemetery purposes). The law is straight forward and provides a great opportunity for Township government to demonstrate a continued commitment to transparency, as every payment made will now have the Clerk verifying its authenticity. The Illinois General Assembly clearly supports this opportunity, as it passed the law unanimously in both chambers.

Compliance will be simple, but here are some key questions (and answers) on how to best practice and implement its requirements.

### 1) What does “attest” mean?

By definition, attesting a document means you witness or formally certify its content by signing your name. Township Clerks already do this, when they “attest” ordinances, annual levies, and other important documents as official Township records.

### 2) How do I “attest” a signature on payouts?

Clerks will now sign their name along with the authorized signature (the Supervisor/Road District Treasurer) on all checks or other financial documents which reflect a payout from Township or Road District funds. The role of the Clerk remains the same as it does on any other official documents – they are simply witnessing or attesting to the authenticity of that authorized signature. From a practical standpoint, before January 2019, we encourage Supervisors to reach out to their banks to notify them of this change in the law and ask their preference on whether (or not) to add the Clerk’s signature to account signature cards. In conversations with various bankers, it is quite possible your bank will not require the Clerk’s signature to be added. This is particularly true in light of question #3.

From a practical standpoint, the check can look like this:

The image shows a sample check form with a light blue background and a decorative border. The form includes the following fields and text:

- Top right corner: "1936"
- Below "1936": A line for "DATE"
- Left side: "PAY TO THE ORDER OF" followed by a horizontal line.
- Right side: "\$" followed by a rectangular box for the amount.
- Below the amount box: "DOLLARS" and a small padlock icon with the text "Security Features Details on back".
- Bottom left: "FOR" followed by a horizontal line.
- Bottom right: Two lines of signatures: "*Sally T. Supervisor*" and "*James T. Clerk, Attest*".
- Bottom center: A MICR line with the text "⑆000000186⑆ 000000529⑈ 1000".

Absent a specific request from your bank, there should be no reason to have specialized checks printed with an “attestation line.” The authorized signature should appear on the actual signature line, and whether the attestation appears above or below the line is simply a matter of what is practical (i.e., wherever there is room to attest the signature).

3) Can the Clerk now write checks on their own?

NO. Again, the Clerk is still simply serving as a “witness” to the payment. The Clerk has NO authority to write a check, and they will have NO legal (or “fiduciary”) responsibility related to the payment of funds. In fact, this may be the reason why some banks will NOT want to add Clerks to a signature card(s). Obviously, the Supervisor and Clerk will have to coordinate their schedules to make sure they are both available to sign all checks in a timely fashion to avoid any late penalties associated with Illinois’ Local Government Prompt Payment Act.

4) Rather than coordinate schedules, can we have a rubber stamp with the Clerk’s signature?

There is no question that pre-printed signatures and rubber stamps are almost universally considered a permissible way to endorse a check. Accordingly, a rubber stamp for an attestation would also be permissible, assuming the Clerk agrees to have one made. HOWEVER, you will still require proof that the Clerk attested the expenditure. Do you have something in your meeting minutes where the Clerk authorizes the use of the rubber stamp on the bills as presented? Do you have a separate note/email from the Clerk granting permission? Again, we are looking for something that documents the Clerk’s consent to the stamp, and do not forget that any notes/emails received authorizing the use of the stamp become records under both Illinois’ Freedom of Information Act and the Local Records Act and cannot be destroyed.

In addition to this evidence of attestation, we recommend you keep the stamp secure at all times.

5) Does the Clerk really need to attest every payment or just the overall warrant packet presented at the meeting?

Based on the language of the law, we recommend the Clerk attest every payout, and not a summary sheet. This is even true when you are using a rubber stamp (i.e., the stamp needs to appear on every check).

6) What about those payments we make without a check?

“E-checks” and other electronic payments are being used on an ever-growing basis. Clearly, there should be protocols in place for the “authorized signature” already. Much like a bank, you should notify and work with the vendor(s) that handle your electronic payments to make sure they understand the new law and ask for their input on if they require any changes on their end. If the software or provider does not allow for the Clerk to attest, a similar plan for documenting the use of a rubber stamp makes sense here, too.

7) Will the Clerk need to be bonded?

NO. They will not actually handle any money or funds. That remains the statutory responsibility of the Supervisor/Road District Treasurer.

8) Will the Clerk have access to confidential information?

Possibly. Some Townships still issue direct payments to General Assistance recipients, so their name and the amount(s) of payment will be known to the Clerk. However, the Clerk is already under a responsibility to keep private information from being shared with the public (e.g., as the keeper of confidential closed session minutes until they are released by the Board). In any event, the amount being paid on any check is **not** confidential, as the expenditure of public funds is subject to any Freedom of Information Act request.

As with any new law, TOI encourages you to contact your legal counsel with any questions. You may also want to contact your auditor and insurance carrier/bonding company (if you are not a member of TOIRMA) on this new law to discuss any further practical considerations.