



TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

May 17, 1982

FILE NO. 82-013

STATE MATTERS:
Powers of the Department of
Public Aid

Jeffrey C. Miller, Director
Illinois Department of Public Aid
316 South Second Street
Springfield, Illinois 62763

Dear Mr. Miller:

I have your letter in which you ask if the Department of Public Aid is authorized to discharge a debt owed to the State by the acceptance of payment in real or personal property of equivalent value. For the reasons hereinafter stated, it is my opinion that the Department of Public Aid is without such authority.

You state in your letter that a certain hospital has received several million dollars of medical assistance payments

COPIES

Mr. Jeffrey C. Miller - 2.

from the State. Upon cost reconciliation, it has been determined that some sixteen million dollars of the amounts paid out by the Department represented erroneous payments or overpayments now owing to the State. The hospital is presently without sufficient funds to repay the State but has offered to make repayment, in part, by refurbishing a building and transferring title to the property to the State. You ask if the Department may accept the property in lieu of money in partial repayment of the debt.

A payment of public money induced by fraud or misrepresentation, or payment of public money made under a mistake of fact, may be recovered. (City of Chicago v. Weir (1897), 165 Ill. 582, 590; 1950 Ill. Att'y Gen. Op. 263.) The Department of Public Aid is granted specific power to collect claims and enforce the penalty provisions provided in the Public Aid Code (Ill. Rev. Stat. 1979, ch. 23, par. 12-12), and in the case of medical assistance payments, to recover money improperly or erroneously paid, or overpayments, to medical assistance vendors. (Ill. Rev. Stat. 1980 Supp., ch. 23, par. 12-4.25, as amended by P.A. 82-440, effective September 14, 1981.) In the absence of fraud or misrepresentation, a vendor of goods or services under the medical assistance program is liable only for the amount of payments made to which it was not entitled, or to any excess payments received. (Ill. Rev. Stat. 1979, ch. 23, par. 12-15, as amended by P.A. 82-440, effective

Mr. Jeffrey C. Miller - 3.

September 14, 1981.) Such overpayments or erroneous payments may be recovered either in a civil action, or by setoff, crediting against future billings, or by requiring direct repayment to the Department. (Ill. Rev. Stat. 1980 Supp., ch. 23, par. 12-4.25 as amended; Ill. Rev. Stat. 1979, ch. 23, par. 12-15 as amended.)

Thus, it is clear that the Department is authorized to recover repayments from the recipient hospital. It is the general rule that in the absence of consent by the creditor, payment to discharge a debt may be made only in money. (Consolidated Freightways v. Industrial Com. (1971), 48 Ill. 2d 221, 224.) It is my opinion that the Department lacks authority to consent to the acceptance of anything other than money in repayment of a debt owed to the State.

An administrative agency, such as the Department of Public Aid, has no inherent or common law powers, but is empowered to act only according to an express legislative grant of power or authority, or a power necessarily implied to execute an express power and authority. (Parliament Ins. Co. v. Department of Revenue (1977), 50 Ill. App. 3d 341, 347; Department of Public Works v. Ryan (1934), 357 Ill. 150, 155.) The Department is given the express power to recover erroneous payments or overpayments to medical assistance vendors in the manner provided in sections 12-4.25 and 12-15 of the Public Aid Code (Ill. Rev. Stat. 1980 Supp., ch. 23, par. 12-4.25 as

Mr. Jeffrey C. Miller - 4.

amended; Ill. Rev. Stat. 1979, ch. 23, par. 12-15 as amended). However, the Department is granted no express power or authority, nor is such power or authority necessarily implied, to consent to accept anything but money in discharge of a debt owed to the State.

If the General Assembly had intended to vest in the Department the authority to discharge debts due to overpayment or erroneous payment of medical assistance funds by the acceptance of property in lieu of money, it could have granted that power expressly. Instead, the General Assembly provided specific methods by which monies owed may be recovered or offset, none of which includes either an express or implied grant of such authority.

Therefore, it is my opinion that, in the absence of specific statutory authority granted to the Department of Public Aid, the Department does not possess the power to discharge a debt owed to the State by accepting property in lieu of money.

Very truly yours,

A T T O R N E Y G E N E R A L