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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

July 17, 1985

FILE NO. 85-006

FINANCE:

Duty of the State Treasurer
to Act as Ex Officio Custodian
of the Bond Proceeds of the
Illinois State Toll Highway
Authority.

Honorable James H. Donnewald
Illinois State Treasurer
State House, Room 219
Springfield, Illinois 62706

Dear Mr. Donnewald:

I have your letter wherein you inquire regarding what effect, if any, Public Act 83-1258 has upon your statutory duty as Treasurer to act as the ex officio custodian of the bond proceeds of the Illinois State Toll Highway Authority. Public Act 83-1258 amended several provisions of "AN ACT in relation to the construction, operation, regulation and maintenance of a system of toll highways, and to create the Illinois State Toll Highway Authority, and to define its powers and duties, etc." [Toll Highway Authority Act] (Ill. Rev. Stat. 1983, ch. 121, par. 100-1 et seq., as amended), including certain provisions relating to the issuance of revenue bonds and the disposition of their

proceeds. Based upon my review of the provisions of Public Act 83-1258 and its legislative history, it is my opinion that no changes in your powers or duties as ex officio custodian have been effected.

Prior to the enactment of Public Act 83-1258, sections 17 and 24 of the Toll Highway Authority Act (see Ill. Rev. Stat. 1983, ch. 121, pars. 100-17, 100-24) provided that the State Treasurer was to serve as ex officio custodian of the Illinois State Toll Highway Fund, a special fund into which the "gross total income" of the Authority, including all bond proceeds, was required to be paid, except for those monies retained in locally held accounts pursuant to statute. As originally proposed, Senate Bill 1733 (Public Act 83-1258) would have amended section 17 of the Toll Highway Authority Act to provide in pertinent part:

" * * *

* * * The proceeds from the sale of such bonds shall be paid to the Treasurer of the State of Illinois as ex officio custodian, or to any trustee or depository designated by the Authority in a bond resolution. * * *

* * *

(Emphasis added.)

The language underscored above was an addition to the previously existing language of section 17, which required all bond proceeds to be paid to the Treasurer.

Complementary language was also proposed for section 24 of the Toll Highway Authority Act. Section 24, as then in effect, provided in part:

"The gross total income derived from the sale of bonds, including receipts and income derived from tolls, licenses, gifts, donations, concessions, fees, rentals, and all other revenues from whatever source derived, shall, within three days after receipt thereof, be paid to the Treasurer of the State of Illinois, and held by him as a special fund known

as the Illinois State Toll Highway Authority Fund, except that the Authority may retain portions of the Illinois State Toll Highway Authority Fund as a locally maintained construction fund revolving account and as a revenue fund revolving account, where authorized by a bond resolution, and as locally maintained change funds, where necessary for the operations of the Authority. * * *
(Emphasis added.)

Section 24, as amended by Senate Bill 1733, provides as follows:

"Except as otherwise provided in any bond resolution, the proceeds derived from the sale of bonds, and all receipts and income derived from tolls, licenses, gifts, donations, concessions, fees, rentals, and all other revenues from whatever source derived, shall, within three days after receipt thereof, be paid to the Treasurer of the State of Illinois, and held by him as a special fund known as the Illinois State Toll Highway Authority Fund, except that the Authority may retain portions of the Illinois State Toll Highway Authority Fund as a locally maintained construction fund revolving account and as a revenue fund revolving account, where authorized by a bond resolution, and as locally maintained by a bond resolution, and as locally change funds, where necessary for the operation of the Authority. * * *" (Emphasis added.)

Had the amendments to sections 17 and 24 of the Toll Highway Authority Act been enacted as originally proposed in Senate Bill 1733, it is clear that the Illinois State Toll Highway Authority would, thereby, have been empowered to elect in a bond resolution to deposit bond proceeds with a trustee or depository instead of the Treasurer. Subsequent action of the General Assembly with respect to Senate Bill 1733, however, limited its effect upon the powers and duties of the Treasurer.

House Amendment No. 4 to Senate Bill 1733, adopted on second reading in the House of Representatives, deleted the proposed language in section 17 of the Toll Highway Authority Act which would have empowered the Authority to pay bond proceeds to a trustee or depository instead of the State Treasurer. In explaining the purpose of this amendment, its sponsor, Representative Greiman, stated:

" * * *

The Bill [as proposed] removes the State Treasurer as the custodian of the Authority's bond funds. The present law requires that the State Treasurer, by statute, be the custodian of the Authority's bond funds. * * *
Amendment 4 places the State Treasurer back in as the mandatory, statutory custodian of the Authority's bond funds.
* * *

* * * " (Emphasis added.) (Remarks of Representative Greiman, House Debate on Senate Bill No. 1733, June 22, 1984, at 61.)

The amendatory language in section 24, however, was not changed prior to the enactment of Senate Bill 1733 into law, and thus became law as proposed. (See Ill. Rev. Stat. 1984 Supp., ch. 121, pars. 100-17, 100-24.)

It is a well established principle that the intent of a statute is the law. (City of Decatur v. German (1924), 310 Ill. 591, 595.) Thus, the principal purpose of construing a statute is to arrive at the legislative intent and render it effective. (Droste v. Kerner (1966), 34 Ill. 2d 495, 503, cert. denied, 385 U.S. 456 (1967).) The legislative intention should be ascertained from the entire statute with every material part of it taken and construed together. (Karlson v. Murphy (1944), 387 Ill. 436, 443.) A thing within the intention is regarded as within the statute although not within the letter, and a thing within the letter is not within the statute unless also within the intention. People ex rel. Keeney v. City of Chicago (1894), 152 Ill. 546, 551.

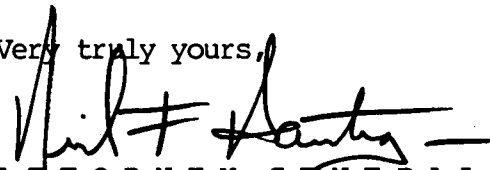
As noted above, Senate Bill 1733, if enacted as originally proposed, would have empowered the Illinois State Toll Highway Authority to elect to pay bond proceeds either to the State Treasurer, for inclusion in the Illinois

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State Toll Highway Fund, or to a trustee or trustees or a depository designated in the bond resolution. Subsequent to the introduction of Senate Bill 1733, however, the General Assembly deleted reference to this power in section 17 of the Act, for the express purpose of restoring the State Treasurer as the "mandatory, statutory custodian" of the Illinois State Toll Highway Authority's bond proceeds. Although the complementary language added to section 24 of the Toll Highway Authority Act was not deleted, that section must be read and construed together with section 17 of the Act and a meaning given to it consistent with the general intent of the amendment. If section 24 was interpreted to grant to the Illinois State Toll Highway Authority the power to direct the payment of bond proceeds to a custodian other than the State Treasurer, the General Assembly's intent to restore the Treasurer as the "mandatory, statutory custodian" of the Authority's bond proceeds would be defeated. Because that power is clearly not within the intent of the Toll Highway Authority Act, as amended, it cannot be granted by section 24 thereof.

Therefore, it is my opinion that the statutory duty of the State Treasurer to act as the sole custodian of the Illinois State Toll Highway Authority's bond proceeds is unchanged by Public Act 83-1258.

Very truly yours,



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