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SPRINGFIELD

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FILE NO. S-1334

STATE MATTERS:
Statute of Limitations for
Illinois State Scholarship
Commission Guaranteed Loans

Dr. Joseph D. Boyd
Executive Director
Illinois State Scholarship Commission
102 Wilmot Road
Deerfield, Illinois 60015

Dear Dr. Boyd:

You have asked whether the statute of limitations applies in suits by the Commission to collect defaulted loans to students. Sections 30-15.10 and 30-15.12 of the Higher Education Student Assistance Law in the School Code (Ill. Rev. Stat. 1975, ch. 122, pars. 30-15.10 and 30-15.12) authorize the Commission to guarantee loans made by lenders, such as banks, to college students. If the borrower defaults, the Commission is required to pay to the lender the amount of the loss. The Commission thereupon becomes subrogated to the rights of the

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lender and is entitled to an assignment to the Commission of the note or other evidence of indebtedness.

The statutory period of limitations for " * * * promissory notes, * * * or other evidences of indebtedness in writing" set forth in section 16 of "AN ACT in regard to limitations (Ill. Rev. Stat. 1975, ch. 83, par. 17) is ten years. However, that section does not expressly provide that the ten-year limitation runs against the State. The rule is well established that statutes of limitations, unless they expressly so provide, do not run against the State when the State is collecting obligations owed to it. Clare v. Bell (1941), 378 Ill. 128, 130-131; In re Bird's Estate (1951), 410 Ill. 390, 394; Illinois Railway Museum v. Siegel (1971), 132 Ill. App. 2d 74, 83.

The terms of the Higher Education Student Assistance Law (Ill. Rev. Stat. 1975 and 1976 Supp., ch. 122, pars. 30-15.1 through 30-15.13) make it clear that the State Scholarship Commission is an agency of the State government. Since, as stated earlier, the Commission pays the amount of the lender's loss and thereupon becomes subrogated to the rights of the lender, the debt becomes one owed to the State. The debt is not one to be collected by the State on behalf of private persons, to which

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the above rule by its terms does not apply.

Because I conclude that the statute of limitations does not run on defaulted loans assumed by the Commission, it is unnecessary to consider your other questions regarding the length of any limitation period, the time it begins to run, and acts that would revive the obligation.

Very truly yours,

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