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SPRINGFIELD

July 13, 1983

FILE NO. 83-008

FINANCE:

Deposit of Moneys Held by the
Treasurer in the Illinois
State Toll Highway Authority Fund

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

Dear Mr. Donnewald:

I have your letter wherein you inquire whether the State Treasurer is authorized to designate a depository for the deposit of the moneys held in the Illinois State Toll Highway Authority Fund, of which he is ex officio custodian. For the reasons hereinafter stated, it is my opinion that the Treasurer is authorized to designate one or more banks which are legal depositories for State funds as depositories for the receipt of such moneys.

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Section 3 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, etc." [hereinafter Toll Highway Authority Act] (Ill. Rev. Stat. 1981, ch. 121, par. 100-3) provides in pertinent part:

"There is hereby created an Authority to be known as The Illinois State Toll Highway Authority, which is hereby constituted an instrumentality and an administrative agency of the State of Illinois. * * *

* * *

"

The Illinois State Toll Highway Authority is the successor agency to the Illinois State Toll Highway Commission, and pursuant to section 33 of the Toll Highway Authority Act (Ill. Rev. Stat. 1981, ch. 121, par. 100-33), all of the duties, obligations, functions, powers, property, rights, privileges, interests and assets of the original Commission have been transferred to the Authority. Section 24 of the Toll Highway Authority Act (Ill. Rev. Stat. 1981, ch. 121, par. 100-24) provides 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

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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. The State Treasurer shall be ex officio custodian of such special fund, which fund shall be held, invested and disbursed for the purposes provided herein upon the order of the Authority and in accordance with provisions and covenants of a bond resolution authorizing the issuance of bonds. The interest accruing on said special fund shall be computed and added to the principal thereof every six months. * * *" (Emphasis added.)

Further, section 4.04 of the 1955 Bond Resolution of the Illinois State Toll Highway Commission, which constitutes a contract between The Illinois State Toll Highway Authority and the holders of Toll Highway bonds issued in accordance therewith (1981 Ill. Att'y Gen. Op. 3, 5), provides in pertinent part:

"Investment of Revenues. All moneys held by the Treasurer in The Illinois State Toll Highway Fund (1955) for and credited to the Interest Account, Interest Reserve Account, Sinking Fund Account, and General Reserve Account, pending their investment, shall be deposited by the Treasurer in banks which are legal depositories for State funds, * * *."

The Toll Highway Authority Act provides that the State Treasurer shall be ex officio custodian of the Illinois State Toll Highway Authority Fund. The Act does not, however, prescribe the manner in which moneys in the Fund are to be deposited or invested by the Treasurer. (See generally 1971 Ill. Att'y Gen. Op. 1, wherein Attorney General Scott advised

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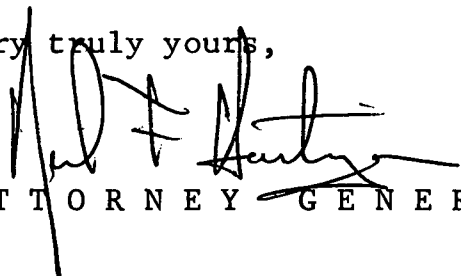
that the Illinois State Toll Highway Commission was not authorized to prescribe how the State Treasurer should invest moneys in the Illinois State Toll Highway Authority Fund.) Absent specific statutory authority to the contrary, it is my opinion that the State Treasurer, as ex officio custodian of the Fund, has the sole authority to designate a depository for the moneys held in the Fund.

Moreover, this conclusion is also required by the language of section 4.04 of the 1955 Bond Resolution of the Illinois State Toll Highway Commission, which, as stated above, constitutes a contract between The Illinois State Toll Highway Authority and Toll Highway bondholders. (1981 Ill. Att'y Gen. Op. 3, 5.) Section 24 of The Toll Highway Authority Act provides that the moneys held by the Treasurer in the Illinois State Toll Highway Authority Fund shall be held in accordance with the provisions and covenants of the bond resolution authorizing the issuance of bonds. Section 4.04 of the 1955 Bond Resolution provides that all moneys held by the Treasurer in the Illinois State Toll Highway Authority Fund shall be deposited by him in banks which are legal depositories for State funds. Depositories for State funds are selected by the Treasurer in the manner set out in "AN ACT in relation to State moneys" (Ill. Rev. Stat. 1981, ch. 130, par. 20 et seq.). The State Treasurer is the only officer who may select depositories

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for State funds under "AN ACT in relation to State moneys"
(Ill. Rev. Stat. 1981, ch. 130, par. 26). Therefore, because
neither the Illinois State Toll Highway Authority Act nor the
1955 Bond Resolution purports to limit the authority of the
State Treasurer as ex officio custodian of the Illinois State
Toll Highway Authority Fund to select a depository for such
moneys, he may select one or more depositories for such moneys
in accordance with the usual practices of his office.

Very truly yours,



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