ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

September 25, 1991

FILE NO. 91-035

COUNTIES:
Interest Income of
County Special Funds

-

Honorable Gary L. Spencer
State's Attorney, Whiteside County
Whiteside County Courthouse
Morrison, Illinois 61270

Dear Mr. Spencer:

I have your letter wherein you inquire whether interest income accruing on investments of monies in certain county funds, e.g., the landfill fund, landfill improvement fund, special landfill fund and the county nursing home fund, should be credited to those particular funds or to the county corporate fund. For the reasons hereinafter stated, it is my opinion that interest income earned from the investment of special fund monies should be credited to those special funds generating the interest, and not to the county corporate fund.

500 South Second Street, Springfield, Illinois 62706 217-782-1090 • TDD 217-785-2771 • FAX 217-782-7046
100 West Randolph Street, Chicago, Illinois 60601 312-814-3000 • TDD 312-814-7123 • FAX 312-814-3806

Procedures for the investment of public funds by public agencies, including counties, are set out in the Public Funds Investment Act (Ill. Rev. Stat. 1989, ch. 85, par. 900 et seq., as amended by Public Acts 86-1038, effective March 19, 1990; 86-1213, effective August 30, 1990; and 86-1324, effective September 8, 1990). Section 2 of that Act (Ill. Rev. Stat. 1990 Supp., ch. 85, par. 902) provides, in pertinent part:

> " * * *
>
> * * * All earnings accruing on any investments or deposits made pursuant to the provisions of this Act shall be credited to the public agency by or for which such investments or deposits were made, except as provided otherwise in Section 4.1 of the State Finance Act or the Local Governmental Tax Collection Act, and except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund.
>
> * * * "

(Emphasis added.)

Section 3 of the Act (Ill. Rev. Stat. 1989, ch. 85, par. 903) provides:

> "If any securities, purchased under authority of Section 2 hereof, are issuable to a designated payee or to the order of a designated payee, then the public agency shall be so designated, and further, if such securities are purchased with money taken from a particular fund of a public agency, the name of such fund shall be added to that of such public agency. If any such securities are registerable, either as to principal or interest, or both, then such securities shall be so registered in the name of the public agency, and in the name of the fund to which they are to be credited."

Section 4 of the Act (Ill. Rev. Stat. 1989, ch. 85, par. 904) provides in part:

> "All securities purchased under the authority of this Act shall be held for the benefit of the public agency which purchased them, and if purchased with money taken from a particular fund, such securities shall be credited to and deemed to be a part of such fund, and shall be held for the benefit thereof. * * * Except as provided in Section 4.1 of 'An Act in relation to State finance', all payments received as principal or interest, or otherwise, derived from any such securities shall be credited to the public agency and to the fund by or for which such securities were purchased." (Emphasis added.)

For purposes of the Act, the term "securities" appears to include all types of investment instruments, including interest-bearing deposits and accounts. (See Blakey v. Brinson (1932), 286 U.S. 254, 261, 52 S. Ct. 516; Marine Bank of Chicago v. Rushmore (1862), 28 Ill. 463, 471; Durkee v. Franklin Savings Association (1974), 17 Ill. App. 3d 978, 981; In re Estate of Fenton (1982), 109 Ill. App. 3d 57, 60.) Section 4.1 of the State Finance Act (Ill. Rev. Stat. 1989, ch. 127, par. 140.1) does not affect the disposition of interest on funds invested by a county.

The language of sections 2 and 4 of the Public Funds Investment Act cited above appears, initially, to be contradictory. Specifically, section 4 of that Act provides that earnings derived from investments of public funds shall be credited to the public agency and to the fund for which the

securities were purchased. Section 2, on the other hand, provides that earnings shall be credited to the public agency making the investment and, if expressly provided by statute, to a particular fund. This apparent contradiction, however, is resolved by a close examination of the provisions.

Section 2 of the Act requires, generally, that all earnings be credited to the public agency by or for which the investments or deposits in question were made. Although that section does not expressly require earnings to be credited to a particular fund of a public agency, absent a statute so providing, there is nothing therein which would require that earnings credited to a county be credited to the county's general corporate fund in preference to other county funds.

Section 4 of that Act, however, does expressly require earnings of a public agency to be credited to the particular funds generating the earnings. It is well established that all statutes relating to the same subject must be construed with reference to each other so that effect may be given to all the provisions of each, if possible. (Ashton v. County of Cook (1943), 384 Ill. 287, 298.) This may be done by construing the requirements of section 4 of the Act, that earnings be credited not only to a public agency generally, but also the particular fund generating those earnings, to apply as well to section 2 of the Act, which merely requires earnings to be credited to the public agency. Under this construction, the earnings on

the county funds in question should be credited to the particular funds from which the earnings were derived, not to the county general corporate fund. This interpretation is consonant with the common law principle that interest is an accretion or increment to the principal fund earning it, and unless lawfully separated therefrom, becomes a part thereof. Lawson v. Baker (Tex. App. Ct. 1920), 220 S.W. 260, 272; Pomona City School District v. Payne (Cal. App. Ct. 1935), 50 P.2d 822, 825.

Disposition of earnings from investments made by the county treasurer is also provided for in the Counties Code (Ill. Rev. Stat. 1989, ch. 34, par. 1-1001 et seq.). Section 3-11005 of the Code (Ill. Rev. Stat. 1989, ch. 34, par. 3-11005) provides, in pertinent part:

> "* * * All earnings accruing on any investments or deposits made by the County Treasurer * * * shall be credited to and paid into the County Treasury for the Benefit of the county corporate fund to be used for county purposes * * * except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund."

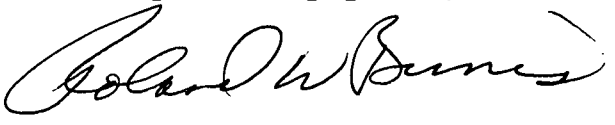
Section 3-11005 of the Counties Code (formerly section 6.1 of "AN ACT concerning county treasurers * * *" (see Ill. Rev. Stat. 1987, ch. 36, par. 22.1)) and the Public Funds Investment Act have been found to be in pari materia, because they deal with the same subject. (Board of Commissioners of the Wood Dale Public Library Dist. v. County of DuPage (1983),

96 Ill. 2d 378.) Statutes in pari materia should be construed together so that they may be given harmonious effect. In re Liquidations of Reserve Insurance Co. v. Washburn (1988), 122 Ill. 2d 555, 559; People ex rel. Edgar v. Pence (1989), 191 Ill. App. 3d 96, 98.

As previously stated, the Public Funds Investment Act provides that the earnings of a public agency are to be credited to the particular fund generating the earnings. Consequently, a harmonious construction of section 3-11005 of the Counties Code would direct that the interest earnings of a county be credited to the particular fund giving rise to the earnings.

Therefore, for the reasons stated above, it is my opinion that interest income earned from the investment of special funds in question should be credited to those special funds, and not to the county corporate fund.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL