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FILE NO. 83-019

BUSINESS ORGANIZATIONS:
Corporate Name

Honorable Howard C. Ryan
Chief Justice, Illinois Supreme Court
111 East Jefferson Street
Ottawa, Illinois 61350

Dear Mr. Chief Justice:

I have your letter wherein you state that the Board of Directors of the Illinois Law Foundation has applied to the Secretary of State to change its name to the "Lawyers Trust Fund of Illinois". You ask whether the adoption by the Foundation of a corporate name containing the phrase "trust fund" is prohibited by section 7 of the General Not for Profit Corporation Act (Ill. Rev. Stat. 1981, ch. 32, par. 163a6), which provides in pertinent part:

"Corporate name. The corporate name [of a not-for-profit corporation] * * * (d) shall not contain any word or phrase which indicates or

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implies that the corporation is organized for any purpose other than a purpose set forth in its articles of incorporation."

For the reasons hereinafter stated, it is my opinion that the Illinois Law Foundation is not prohibited by the aforementioned statute from adopting a new corporate name containing the phrase "trust fund".

The Illinois Law Foundation was incorporated under the General Not for Profit Corporation Act (Ill. Rev. Stat. 1981, ch. 32, par. 163a et seq.) to administer certain funds derived from the investment of lawyers' client trust funds in interest-bearing accounts pursuant to Supreme Court Rule 9-102 (92 Ill. 2d R. 9-102). Supreme Court Rule 9-102 provides in part:

" * * *

(d) All nominal or short-term funds of clients paid to a lawyer or law firm, including advances for costs and expenses, may be deposited in one or more interest-bearing trust accounts established with a bank or savings and loan association, with the Illinois Law Foundation designated as income beneficiary. A lawyer or law firm electing to create or maintain such a pooled, interest-bearing trust account ('participating lawyer or law firm') shall comply with the following provisions:

* * *

(3) A participating lawyer or law firm shall direct the depository institution to remit net interest or dividends, after deduction of charges and fees, as the case may be, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Illinois Law Foundation. * * *

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According to its articles of incorporation, the Illinois Law Foundation is organized and shall be operated solely for charitable and educational purposes. The specific corporate purposes of the Foundation are:

" * * *

- (i) to ensure the provision of legal assistance to the poor throughout this state;
- (ii) to further the administration of justice in Illinois;
- (iii) to provide loans to law students on the basis of need and merit; and
- (iv) for such other programs for the benefit of the public as are specifically approved from time to time by the Illinois Supreme Court for exclusively public purposes.

* * *

"

The holding of funds or other property in trust is not one of the specific purposes set out in the articles of incorporation of the Illinois Law Foundation. Moreover, the funds paid over to the Foundation under Supreme Court Rule 9-102 are not paid over pursuant to an express trust agreement. This does not mean, however, that the Foundation is prohibited from using the phrase "trust fund" in its proposed new name.

The phrase "trust fund" has been defined as follows:

"A fund held by a trustee for the specific purposes of the trust; in a more general sense, a fund which, legally or equitably, is subject to

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be devoted to a particular purpose and cannot or should not be diverted therefrom. In this sense it is often said that the assets of a corporation are a 'trust fund' for the payment of its debts. * * *" (Emphasis added.) (Black's Law Dictionary 1683 (4th rev. ed. 1968)).

Although the funds administered by the Illinois Law Foundation are not held pursuant to an express trust agreement, they do constitute a "trust fund" within the commonly accepted definition of that phrase, because they are required to be devoted to a particular purpose and may not be diverted therefrom. See People ex rel. Cannon v. Southern Illinois Hospital Corp. (1949), 404 Ill. 66, 69; Kelly v. Guild (1963), 42 Ill. App. 2d 143, 156-57; see also People v. Village of Bradley (1937), 367 Ill. 301, 307, wherein the supreme court held that money collected by a village from a special assessment levied to pay the cost of an improvement constituted a "trust fund" which could not lawfully be appropriated to any other corporate purpose; Fidelity Trust Co. v. Village of Stickney (7th Cir. 1942), 129 F.2d 506, 510, and Illinois cases cited therein.

In the circumstance in question, the phrase "trust fund" is a term of art descriptive of the nature of the funds administered by the Foundation, and hence, relates to its corporate purposes in general. The phrase does not indicate or imply that the corporation is organized for the specific purpose of accepting and executing trusts for profit or for any

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purpose other than those purposes stated in its articles of incorporation. Therefore, it is my opinion that section 7 of the General Not for Profit Corporation Act does not prohibit the Illinois Law Foundation from changing its name to the "Lawyers Trust Fund of Illinois".

Very truly yours,



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