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FILE NO. S-918

FINANCE:

**Whether the Illinois Building
Authority Has Authority to
Establish an Imprest Fund**

Honorable Robert G. Cronson,
Auditor General
State of Illinois
Springfield, Illinois 62706

Dear Mr. Cronson:

This responds to your request for an opinion as to whether the Illinois Building Authority is authorized to maintain the Illinois Building Authority Revolving Fund.

The Illinois Building Authority has been authorized by the State Treasurer and the State Comptroller to maintain up to \$10,000 in a "revolving fund" which was established in July 1964. Contrary to what I infer from your letter, I understand that none of the funds received by the Authority are directly deposited in the Revolving Fund. All such funds are deposited with the State Treasurer in the Public Building Fund

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as is required by section 8 of "AN ACT to create the Illinois Building Authority and to define its powers and duties". (Ill. Rev. Stat. 1973, ch. 127, par. 213.8.) The Revolving Fund is not a revolving fund as that term is normally used. The monies for the Revolving Fund are advanced out of funds in the General Operation and Administrative Fund which is an accounting allocation from the Public Building Fund. The Revolving Fund is used for necessary expenses and is reimbursed as necessity dictates. The fund is thus an imprest fund and not a revolving fund.

The question to be answered then is whether there is any authority for the advancement of funds to the Illinois Building Authority for such imprest fund. Such procedure is generally prohibited. Section 9 of the Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, par. 209) provides as follows:

"§ 9. Warrants — Vouchers — Preaudit.)
No payment may be made from public funds held by the State Treasurer in or outside of the State treasury, except by warrant drawn by the comptroller and presented by him to the treasurer to be countersigned except for payments made pursuant to the 'Unemployment Compensation Act', approved July 9, 1951, as amended, and Section 12-8 of the 'Illinois Public Aid Code', approved April 11, 1967, as amended.

No warrant for the payment of money by the State Treasurer may be drawn by the comptroller without the presentation of itemized vouchers indicating that the obligation or expenditure is

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pursuant to law and authorized, and authorizing
the comptroller to order payment.

* * *

This section provides that payments can be made only by warrant upon the presentation of an itemized voucher indicating that the obligation or expenditure is pursuant to law and authorized. Under this section an advancement of funds before an obligation has been incurred would be unauthorized. See State Board of Agriculture v. Brady, 266 Ill. 592, and Fergus v. Russell, 270 Ill. 304.

There are cases which state that the Authority is a corporate entity, separate and apart from the State (see Elec. Contractors v. Bldg. Authority, 33 Ill. 2d 587, and Berger v. Howlett, 25 Ill. 2d 128.) From this one might infer that the Authority is not subject to the provisions of the State Comptroller Act and may have authority to establish an imprest fund. These cases were decided on the basis of the fact that the debt of the Illinois Building Authority was not a debt of the State of Illinois. Since these cases were decided, the Constitution of the State of Illinois has been changed to allow for State debt in certain circumstances, (see section 9 of article IX of the Illinois Constitution of 1970) and the statute creating the Illinois Building Authority has been

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changed to provide that the bonds and interim notes of the Authority "constitute State debt of the State of Illinois within the meaning of the provisions of the Constitution and statutes of the State of Illinois". Public Act 77-545.

Under section 7 of the State Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, par. 207) the Illinois Building Authority is clearly a State agency for purposes of that Act. That section provides as follows:

" * * *

For purposes of this Act, 'State agencies' or 'agencies' mean all departments, officers, authorities, public corporations and quasi-public corporations, commissions, boards, institutions, State colleges and universities and all other public agencies created by the State, other than units of local government and school districts.
* * * "

In view of the changes in the law and the definition of "State agencies" as used in the State Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, pars. 201 et seq.), I am of the opinion that the Illinois Building Authority is subject to the provisions of the State Comptroller Act and for its purposes cannot be considered a corporate entity separate and apart from the State.

Even though the Illinois Building Authority is a

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State agency for purposes of the State Comptroller Act, supra, there may be some question as to whether the funds held for the Authority are "public funds" within the meaning of section 9 of the State Comptroller Act, supra. The Elec. Contractors case, supra, also stated that the funds derived from public bond issues could not be considered "State funds" within the purview of the Illinois Purchasing Act and do not become such because they are held in trust by the State Treasurer. (33 Ill. 2d 587, 593.) The court seemingly reached its decision in this matter because the bonds of the Authority were not State debt and because the Illinois Purchasing Act, at that time, was directed to funds appropriated by the State. (Ill. Rev. Stat. 1963, ch. 127, pars. 132.1 et seq.) The provisions of that Act have since been changed. Ill. Rev. Stat. 1973, ch. 127, pars. 132.1 et seq.

The State Comptroller Act does not define the term "public funds"; however, the Act purports to cover all funds held by the State Treasurer whether in the State treasury or outside the State treasury, and whether for an expenditure authorized by appropriation or by other expenditure authority. See sections 2 and 8 of the State Comptroller Act. (Ill. Rev. Stat. 1973, ch. 15, pars. 202 and 208.) The funds of the

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Illinois Building Authority are held by the State Treasurer and are therefore subject to section 9 of the State Comptroller Act, supra.

In specific cases an imprest fund or funds in the nature of an imprest fund have been authorized by specific statute. See for instance, section 21 of the State Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, par. 21), which authorizes imprest funds for State universities and section 4a of "AN ACT in regard to Attorneys General and State's Attorneys" (Ill. Rev. Stat. 1973, ch. 14, par. 14a), which authorizes the Attorney General to maintain a fund for certain expenditures. While some officers are authorized to maintain a petty cash fund (Ill. Rev. Stat. 1973, ch. 127, par. 171), the limit of such fund is \$100 and would not provide the needed authority in this case. You have cited section 2a.2 of "AN ACT in regard to the payment and disposition of monies received by officers and employees of the State of Illinois by virtue of their office or employment" (Ill. Rev. Stat. 1973, ch. 127, par. 172b), which authorizes temporary trust funds or bank deposits, but as you correctly state, any authority to maintain the funds under this section has expired.

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I have found no general provisions in the statutes which would authorize the Illinois Building Authority to maintain an imprest fund. As you correctly state, there is no provision in the Act creating the Authority which specifically grants such power to the Authority. I, therefore, am of the opinion that the Illinois Building Authority is not authorized to maintain an imprest fund.

Very truly yours,

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