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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 91-009

SCHOOLS AND SCHOOL DISTRICTS:  
Use of Tort Immunity Tax Levy to  
Finance Asbestos Abatement Work

Mr. Robert Leininger  
State Superintendent of Education  
100 North First Street  
Springfield, Illinois 62777-0001

Dear Mr. Leininger:

I have your predecessor's letter wherein he inquired whether school districts may levy taxes pursuant to section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1989, ch. 85, par. 9-107) for the purpose of financing the removal or containment of asbestos, as required by the Federal Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. § 2641 et seq.). For the reasons hereinafter stated, it is my opinion that taxes levied under section 9-107 may not be used for this purpose.

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Your predecessor noted that the statutes authorizing schools to levy taxes for building and for fire prevention and safety purposes (Ill. Rev. Stat. 1989, ch. 122, pars. 17-2, 17-2.11) have limited tax rates. Some school districts may, therefore, be unable to pay fully for asbestos abatement with these funds, and will have to seek alternative financing. It has been suggested that section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act may provide a means whereby additional funds could be raised for this purpose.

Section 9-107 of the Local Governmental and Governmental Employees Tort Immunity Act, which authorizes a tax levy for the payment of costs of specified settlements and judgments, and insurance and risk management programs, provides, in pertinent part:

"A local public entity may levy or have levied on its behalf taxes annually upon all taxable property within its territory at a rate that will produce a sum which will be sufficient to pay the cost of settlements or judgments under Section 9-102, to pay the costs of protecting itself or its employees against liability, property damage or loss, including all costs and reserves of being a member of an insurance pool, under Section 9-103, to pay the costs of and principal and interest on bonds issued under Section 9-105, to pay tort judgments or settlements under Section 9-104 to the extent necessary to discharge such obligations, to discharge any and all obligations under Section 34-18.1 of The School Code, as now or hereafter amended, and to pay the cost of risk care management programs. Provided it complies with any other applicable statutory requirements, the local public entity may self-insure and establish reserves for expected losses for any liability or

loss for which the local public entity is authorized to levy or have levied on its behalf taxes for the purchase of insurance or the payment of judgments or settlements under this Section. The decision of the board to establish a reserve shall be based on reasonable evidence.

Funds raised pursuant to this Section shall be used by any local public entity, including, but not limited to, a school district organized under Article 34 of The School Code, to pay the operating and administrative costs and expenses, including the cost of legal services and the wages and salaries of employees in connection with defending or otherwise protecting itself against any liability or loss described hereinabove and under Federal or State common or statutory law, the Workers' Compensation Act, the Workers' Occupational Diseases Act and the Unemployment Insurance Act, to purchase insurance, to purchase claim services, to pay for judgments or settlements, or to otherwise provide protection to the local public entity or its employees and--with respect to a school district organized under Article 34 of The School Code--to all persons and entities required to be insured, indemnified or otherwise protected under Section 34-18.1 of that Code, as now or hereafter amended, or, pursuant to an intergovernmental contract, other local public entities or their employees. Funds raised pursuant to this Section may be invested in any manner in which other funds of local public entities may be invested. Interest on such funds shall be used only for purposes for which the funds can be used or, if declared surplus, may be used for any other governmental purpose.

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(Emphasis added.)

Asbestos abatement clearly does not involve a settlement or judgment within the purview of sections 9-102, 9-104 or 9-105 of the Act (Ill. Rev. Stat. 1989, ch. 85, pars. 9-102, 9-104, 9-105). Article 34 of The School Code (Ill. Rev. Stat. 1989,

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ch. 122, par. 34-1 et seq.) applies only to Chicago. Therefore, if a tax can be levied under section 9-107 for asbestos abatement, it must find authorization under section 9-103 of the Act. (Ill. Rev. Stat. 1989, ch. 85, par. 9-103.)

Section 9-103 of the Local Governmental and Governmental Employees Tort Immunity Act provides, in pertinent part:

"(a) A local public entity may protect itself against any liability which may be imposed upon it or one of its employees for a tortious act \* \* \* by means including, but not limited to, insurance, individual or joint self-insurance, the purchase of claims services and legal services, the purchase of educational, inspectional and supervisory services relating to loss prevention, or participation in a reciprocal insurer as provided in Sections 72, 76 and 81 of the Illinois Insurance Code. \* \* \* The expenditure of funds of a local public entity to protect itself or its employees against liability is proper for any local public entity.

\* \* \*

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It is recognized, under the statutory construction rule of ejusdem generis, that when general words, such as "including others" or "among others", follow the enumeration of several specific classes of things, the general words will be construed as applying only to objects of a similar nature as those specifically enumerated. (Farley v. Marion Power Shovel Co. (1975), 60 Ill. 2d 432.) This rule is equally applicable where the specific listing follows the general reference to things which "include, among others", those specifically listed. Kostecki by Kostecki v. Pavlis (1986), 140 Ill. App. 3d 176, 181.

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When the stated rule is applied to section 9-103, it is clear that its provisions relate to protection from loss by different types of insurance, claims services, legal services and professional consultation relating to loss prevention. None of the types of services enumerated therein could reasonably be construed to include the sort of building changes and labor involved in asbestos containment or removal. Therefore, it must be concluded that asbestos abatement does not constitute a means of protection against tort liability which section 9-103 of the Act addresses.

The tax levy authorized in section 9-107 of the Act is specifically related to the payment of the types of claims or costs of protection against claims set forth in sections 9-102 through 9-105 of the Act. Since, as noted above, asbestos abatement is not included within the purview of section 9-107, it is my opinion that the tax levy authorized by section 9-107 cannot be used for the purpose of funding such work.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL