



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-1472

**OFFICERS:**

State Treasurer -- Authority to  
Invest State Funds in State Aid  
Anticipation Certificates

Honorable Jerry Cosentino  
Illinois State Treasurer  
219 State House  
Springfield, Illinois 62706

Dear Mr. Cosentino:

I am writing in response to your inquiry regarding your power under section 22 1/2 of "AN ACT in relation to State moneys" (Ill. Rev. Stat. 1977, ch. 130, par. 41a), to invest State funds in "bonds issued by counties or municipal corporations of the State of Illinois". You propose to invest in State aid anticipation certificates issued pursuant to authority granted in section 18-18 of The School Code (P.A. 81-165, effective August 11, 1979, which will be codified in Ill. Rev. Stat., ch. 122, par. 18-18). For the reasons hereinafter stated, it is my opinion that upon obtaining prior approval of the Governor, you are authorized

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by section 22 1/2 to invest State funds in State aid anticipation certificates issued by the Chicago Board of Education.

Section 18-18 of The School Code requires State aid anticipation certificates to mature prior to August 1, 1980, and authorizes interest on such certificates at a rate not to exceed the rate authorized for general obligation bonds of the board of education issuing such certificates. The section provides that the certificates may be secured by an assignment of State aid. You have advised that the Chicago Board of Education needs the proceeds of State aid anticipation certificates to pay salaries of teachers and employees due December 21; that the Internal Revenue Service will require that it be paid an amount equal to 15 percent of any funds obtained by the Chicago Board of Education; that you, therefore, contemplate investing 50 million dollars in such certificates; and that the State Superintendent of Education will voucher the State aid funds payable under such certificates to your order as State Treasurer.

You now contemplate having the certificates mature in April and May. As you know, State aid is based upon the number of school days and number of pupils attending in any given school district. (Ill. Rev. Stat. 1978 Supp., ch. 122, par. 18-8.) Therefore, if schools are closed for lack of funds or for any other reason, the amount of State aid payable would be reduced. Assuming that the Chicago schools

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are not forced by financial problems to close, you, as State Treasurer, would normally pay out the State aid to the Chicago Board from State funds under your control. If you held State aid anticipation certificates which contained a general promise to pay from State aid receipts, failure to obtain prompt payment from that source would entitle you to utilize set-off against the amount of State aid at any time payable under any certificates which are in default. So long as the schools did not close, you would have excellent security for payment of the certificates and would have ultimate control of the means by which they are paid.

It is my opinion that the Chicago Board of Education is a "municipal corporation" within the meaning of section 22 1/2 and that the certificates must be construed to be "bonds" within the meaning of that section.

Boards of education generally, and the Chicago Board of Education in particular, have been held by the Illinois Supreme Court to be municipal corporations.

(Leviton v. Bd. of Education of the City of Chicago (1940), 374 Ill. 594, 595-600; Bd. of Education of the City of Chicago v. Upham (1934), 357 Ill. 263, 266-69.) Section 34-2 of The School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34-2) provides that the Chicago Board of Education is "a body politic and corporate".

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The term "bond" is a general one. Because the term, as used in this particular context, is not defined by statute, it should be given its ordinary and popularly understood meaning. (General Motors Corp. v. Industrial Comm'n (1975), 62 Ill. 2d 106, 112; People v. Dednam (1973), 55 Ill. 2d 565, 568.) A "bond" has been defined as a certificate or evidence of a debt, a debt on which interest is paid, a mere promise to pay, an instrument under seal, or an instrument not necessarily under seal. (Black's Law Dictionary 224 (4th ed. 1968).) State aid anticipation certificates in the form of promises to pay from State aid payments would clearly fall within the aforementioned definitions.

The General Assembly appears to have intended that funds invested under section 22½ be secured and that the security be such that the probability of repayment would be very high. I further note that in section 11 of "AN ACT in relation to State moneys" (Ill. Rev. Stat. 1977, ch. 130, par. 30), bonds or notes of a school board are designated as adequate security for State funds deposited in banks which are not federally insured. If the State aid anticipation certificates which you purchase are secured by the assignment of future State aid payments, they will be well secured within the meaning of section 22 1/2.

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The fact that you, as State Treasurer, control the funds from which State aid payments are made and the fact that the State has the right of set-off if there is a default in payment of any certificates when due (Ill. Rev. Stat. 1977, ch. 15, par. 210.05), establish a very high probability that the certificates will be paid promptly and in full, together with interest. It is, therefore, my opinion that such certificates meet all the requirements which the General Assembly had in mind when it authorized investment of State funds in "bonds issued by counties or municipal corporations of the State of Illinois".

Very truly yours,

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