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FILE NO. 82-048

**FINANCIAL INSTITUTIONS:
Distribution of Unclaimed
Dividends**

William C. Harris
Commissioner of Banks and Trust Companies
Room 400 Reisch Building
Springfield, Illinois 62701

Dear Commissioner Harris:

I have your letter wherein you ask the following two questions:

(1) Under the provisions of section 65 of the Illinois Banking Act (Ill. Rev. Stat. 1981, ch. 17, par. 377), what is the proper distribution of unclaimed dividends remaining after the termination of receivership?

(2) For what purposes should interest earned on unclaimed dividends be used?

For the reasons hereinafter stated, it is my opinion that the provisions in section 65 of the Illinois Banking Act providing for the distribution of unclaimed dividends are to be followed

William C. Harris - 2.

even if such distribution occurs more than one year from the entry of a decree of dissolution. Interest earned on unclaimed dividends is to be distributed in the same manner as the dividends.

You state that your questions arise from the liquidation of the First State Bank of Westmont. On May 16, 1963, the Director of Financial Institutions [under the present statute, the Commissioner of Banks and Trust Companies], acting pursuant to the pertinent provisions of the Illinois Banking Act (Ill. Rev. Stat. 1981, ch. 17, par. 363 et seq.), took possession and control of the bank and appointed the Federal Deposit Insurance Corporation [FDIC] as receiver. On October 3, 1979, the Circuit Court of DuPage County entered a decree approving the first and final account of the FDIC as receiver.

Beginning in October 1980, the FDIC began the distribution of the final dividend in accordance with the court order terminating the receivership. In January 1982, the FDIC delivered a check for \$2,024.42, payable to the Commissioner, which represented the balance in the FDIC account for final distribution of receivership funds. These funds represented checks issued but not negotiated and checks issued but returned as undeliverable. The \$2,024.42 check has been deposited in a savings account yielding 5 1/4% interest per annum.

Section 65 of the Illinois Banking Act (Ill. Rev. Stat. 1981, ch. 17, par. 377) provides as follows:

"Dividends, Dissolution. From time to time during receivership the Commissioner shall make and pay from monies of the bank a ratable dividend on all claims as may have been proved to his satisfaction or adjudicated by the court. Claims so proven or adjudicated shall bear interest at the rate of three per cent per annum from the date of the appointment of the receiver to the date of payment, but all dividends on a claim shall be applied first to principal. In computing the amount of any dividend to be paid, if the Commissioner shall deem it desirable in the interests of economy of administration and to the interest of the bank and its creditors, he may pay up to the amount of ten dollars of each claim or unpaid portion thereof in full. As the proceeds of the assets of the bank are collected in the course of liquidation, the Commissioner shall make and pay further dividends on all claims previously proven or adjudicated. All unclaimed dividends shall be held and deposited with the Commissioner to be paid out by him when proper claims therefor are presented to him. After one year from the entry of a decree of dissolution, the Commissioner shall make a pro rata distribution of the then unclaimed dividends to those unpaid claimants who have accepted the last preceding dividend until such claim or claims are paid in full. If any monies or assets shall then remain in his hands, the Commissioner shall distribute the same pro rata to the bank's stockholders. The Commissioner shall deduct from the funds so deposited or held by him the expenses of distributing the same." (Emphasis added.)

It is clear that the General Assembly intended that, in the case of the liquidation of a bank, monies and assets of the bank should be first applied to claimants of the bank and then, if any funds remain, to the stockholders of the bank. This is consistent with Illinois case law which holds that, in the event that a bank is liquidated, assets are not to be distributed to bank stockholders until the claims of the bank's creditors have been satisfied. Wilkin v. Citizens National

William C. Harris - 4.

Bank of Paris (1938), 298 Ill. App. 38, 44; Chicago Title & Trust Co. v. Central Trust Co. (1924), 312 Ill. 396, 413.

Although section 65 of the Act states that distribution of then unclaimed dividends is to occur one year from the entry of the decree of dissolution, there is no basis in either the statute or the case law for the conclusion that the manner of distribution of unclaimed dividends should differ if such distribution takes place more than one year after the entry of the decree of dissolution. Furthermore, to alter the method of distributing monies and assets of the liquidated bank would be in direct contradiction of section 65 of the Act and the holdings of Wilkin and Chicago Title & Trust Co.

The cardinal rule of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the true intent and meaning of the General Assembly. (People ex rel. Carey v. Power (1975), 59 Ill. 2d 569, 571.) In ascertaining the intent of the General Assembly, consideration must be given to the entire statutory scheme, its purposes and its objectives. (Mallin v. Najarian (1979), 76 Ill. App. 3d 441, 443.) Furthermore, the general rule is that a statutory provision specifying a time within which a public officer is to perform an official act is to be regarded as directory, unless the nature of the act to be performed, or language used by the General Assembly, shows that the designation of time was

William C. Harris - 5.

intended as a limitation of the power of the officer. (Whalin v. City of Macomb (1875), 76 Ill. 49, 52; Standard v. Village of Industry (1894), 55 Ill. App. 523, 525-526.) A statute which specifies the time of performance will also be considered mandatory when the rights of parties will be injuriously affected by failure to act within the time indicated. Carrigan v. Liquor Control Commission (1960), 19 Ill. 2d 230, 233.

There is no basis for concluding that the provisions in section 65 of the Act, providing that the distribution of unclaimed dividends shall occur after one year from the entry of the decree of dissolution, were intended to limit the power of the Commissioner by preventing him from making a distribution of unclaimed dividends to claimants more than one year from the entry of a decree of dissolution. Rather, section 65 of the Act requires that such distribution not occur until one year from the entry of a decree of dissolution. There is also no basis for concluding that an interpretation of this provision as directory would injuriously affect the rights of the claimants or stockholders. Instead, permitting the Commissioner to distribute unclaimed dividends to claimants more than one year from the entry of a decree of dissolution would protect the rights of the claimants without depriving the stockholders of any rights they may have to the money. Therefore, it is my opinion that the provisions in section 65 of the

William C. Harris - 6.

Act providing for the distribution of unclaimed dividends are to be followed even if such distribution occurs more than one year from the entry of the decree of dissolution.

Your second question concerns the purposes for which interest earned on unclaimed dividends is to be used. Considering that section 65 of the Act provides that adjudicated or proven claims "shall bear interest at the rate of three per cent per annum from the date of the appointment of the receiver to the date of payment", you ask what should be done with the additional 2 1/4% interest, if it is determined that the unclaimed dividends currently yielding 5 1/4% interest per annum are to be distributed to unpaid claimants. The provisions cited above apply only to the unpaid claims themselves, providing that the amount of such unpaid claims is to increase at the rate of 3% per annum from the date of the appointment of the receiver to the date of payment. Section 65 of the Act in no way limits either the amount or distribution of interest earned on the deposit of unclaimed dividends.

Subsection 60(9) of the Act (Ill. Rev. Stat. 1981, ch. 17, par. 372(9)) gives the receiver of a liquidated bank certain powers and duties regarding the deposit of that bank's monies and imposes certain obligations on the Commissioner:

" * * *

(9) He shall deposit daily all monies collected by him in any state or national bank selected by the

William C. Harris - 7.

Commissioner, who may require (and the bank so selected may furnish) of such depository satisfactory securities or satisfactory surety bond for the safe-keeping and prompt payment of the money so deposited. Said deposits shall be made in the name of the Commissioner in trust for the bank and be subject to withdrawal upon his order or upon the order of such persons as the Commissioner may designate. Such monies may be deposited without interest, unless otherwise agreed. However, if any interest shall be paid by such depository, it shall accrue to the benefit of the particular trust to which the deposit belongs.

* * *

(Emphasis added.)

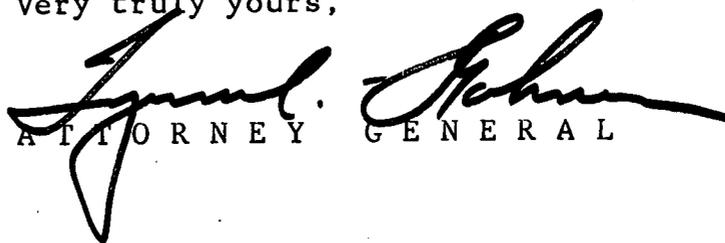
It is clear that the General Assembly intended that any interest earned on the deposit of a liquidated bank's assets was to be made a part of such assets. This is consistent with Illinois case law which holds that a receiver is liable to account and pay over the amount of any benefit or interest which he might make of the money in his hands. (Hooper v. Winston, Trustee (1860), 24 Ill. 353, 367.) Therefore, any interest on the part of the deposit of unpaid dividends would be distributed in the same manner as the unpaid dividends.

Although the Commissioner is not the receiver of the liquidated bank, the Commissioner is given broad powers, pursuant to section 53 of the Act (Ill. Rev. Stat. 1981, ch. 17, par. 365), to take possession and control of a State bank and its assets. There is no basis for concluding that interest earned from the deposit of unclaimed dividends, when such

William C. Harris - 8.

unclaimed dividends are deposited by the Commissioner rather than the receiver, should not be made a part of the unpaid dividends. It is therefore my opinion that interest earned on unclaimed dividends is to be made a part of such dividends and distributed in the same manner as such dividends.

Very truly yours,


ATTORNEY GENERAL