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FILE NO. 84-006

HIGHWAYS:
Procedure for Allocation of
Toll Highway Revenue

Honorable Robert G. Cronson
Illinois Auditor General
Marriott Commerce Building, 1st Floor
509 South Sixth Street
Springfield, Illinois 62701

Dear Mr. Cronson:

I have your letter wherein you inquire regarding the procedure for making allocations of moneys held by the State Treasurer in The Illinois State Toll Highway Fund (1955). Your first question is whether the Authority may make allocations to certain accounts specified in section 4.03 of the Bond Resolution of the Authority (\$415,000,000 Northern Illinois Toll

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Highway Revenue Bonds, Series of 1955) [hereinafter Bond Resolution], or whether these allocations must be made by the State Treasurer. It is my opinion that these allocations may be made only by the State Treasurer. You also ask whether final allocations must be made more frequently than once a year and, if so, how often must they be made. It is my opinion that allocations should be made more frequently than once a year, as hereinafter set forth.

In your second question you ask whether interest moneys earned on Toll Highway funds must be allocated back to the various accounts in proportion to each account's contribution. It is my opinion that interest earned must be allocated back to each account in proportion to the contribution each account made to the production of the interest.

The bond resolution in question was adopted by the Illinois State Toll Highway Commission, the Authority's predecessor, on October 25, 1955. The bond resolution authorized the issuance, from time to time, of bonds in the aggregate principal amount of \$415,000,000. Pursuant to section 4.02 of the bond resolution, all revenues of the Toll Highway, from whatever source derived, are required to be paid to the State Treasurer to be held by him in The Illinois State Toll Highway Fund (1955). Section 3 of 'AN ACT in relation to the

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construction, operation, regulation and maintenance of toll highways, etc." (Ill. Rev. Stat. 1981, ch. 121, par. 314a28) created the Illinois State Toll Highway Commission and section 14 of the same Act (Ill. Rev. Stat. 1981, ch. 121, par. 314a39) authorized it, by resolution, to issue and sell bonds from time to time to finance the acquisition, construction and improvements of any toll highway. Similar power was conferred on the Authority by section 17 of "AN ACT in relation to the construction, operation, regulation and maintenance of a system of toll highways, etc." (Ill. Rev. Stat. 1981, ch. 121, par. 100-17). Section 33 of the same Act (Ill. Rev. Stat. 1981, ch. 121, par. 100-33) transferred all the duties, obligations, functions, powers, property, rights, privileges, interests, and assets of the original Commission to the Authority.

You have stated that the Authority annually makes a final allocation of the receipts which were paid into The Illinois State Toll Highway Fund (1955) to the various accounts specified in section 4.03 of the resolution. You interpret the bond resolution as establishing the State Treasurer as the only authority who can allocate the funds in question to these accounts. I agree with your interpretation.

Section 4.03 of the bond resolution provides in pertinent part:

"Establishment of Accounts. All of the Revenues derived from The Facility and deposited with the

Treasurer as provided by Section 4.02 shall be credited in the following order of priority to the following respective accounts, viz:

1. Maintenance and Operation Account.
2. Interest Account.
3. Interest Reserve Account.
4. Sinking Fund Account.
5. General Reserve Account.

Each of said accounts is hereby created and each of which the Commission hereby covenants and agrees to maintain, and all moneys credited to each of said accounts shall be held in trust by the Treasurer and applied, used and withdrawn only for the purposes and as hereinafter authorized.

1. The Treasurer shall from time to time set aside the Revenues in The Illinois State Toll Highway Fund (1955) and credit to the Maintenance and Operation Account, beginning with the month next succeeding the month during which the operation of The Facility or any part thereof shall commence, until there shall have been credited to the Maintenance and Operation Account an amount equal to thirty per cent (30%) of the total of the budgeted amount for said current fiscal year or part thereof. As funds are withdrawn from the account from time to time for Maintenance and Operation Expenses then the Treasurer shall credit the necessary amount to this account so that this account shall always be maintained at thirty per cent (30%) of the total amount budgeted for each current fiscal year.

2. The Treasurer shall promptly allocate and credit the remaining available Revenues in The Illinois State Toll Highway Fund (1955) to the respective special accounts heretofore in this Article created, and in the following names and in the following order:

(First) To the Interest Account, until there shall be in the Interest Account an amount equal to any unpaid interest then due on all outstanding Bonds,

plus an amount equal to the interest to become due on the next ensuing interest payment date on all outstanding Bonds other than interest which is to be paid from the Construction Account pursuant to Section 6.04.

(Second) To the Interest Reserve Account, until there shall be in the Interest Reserve Account an amount equal to two years' interest upon the aggregate principal amount of all outstanding Bonds. All moneys in this account shall be used and withdrawn to the extent necessary for the purpose of paying interest on the Bonds in the event no other Revenues are available for such purpose. Any moneys withdrawn to meet interest requirements shall be replaced out of the first moneys available for such purpose in The Illinois State Toll Highway Fund (1955).

Whenever the moneys in the Interest Reserve Account exceed two years' interest upon the aggregate principal amount of Bonds outstanding such excess shall be by the Treasurer transferred and credited to the Sinking Fund Account without further order or direction from the Commission.

(Third) To the Sinking Fund Account, until there has been allocated and credited to this Account in each fiscal year, an amount sufficient to retire a principal amount of Bonds, * * *.

(Fourth) After crediting the above accounts with the amounts required, all sums remaining in The Illinois State Toll Highway Fund (1955) shall be credited to the General Reserve Account. * * *

* * *

The above-quoted language requires the "Treasurer" to hold money for the specified accounts in trust. The plain language of this section gives the "Treasurer" sole responsibility for allocating and crediting revenues to the various accounts in the required amounts. The "Treasurer" is defined in section 1.01(x) of the bond resolution as the Treasurer of the State of Illinois, ex officio Treasurer of the Commission.

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You ask whether final allocations must be made more than once a year and, if so, how frequently they should be made. The bond resolution establishes a series of pourovers. Section 4.02 requires that all income and other revenues "shall within three days after receipt thereof be paid to the Treasurer" and held by him as a special fund designated "the Illinois State Toll Highway Fund (1955)". Under section 4.03 the Commission covenants and agrees to maintain each of the accounts specified in that section and the Treasurer is made the trustee of the accounts. Subparagraph 6 of section 4.01 provides that the Commission further covenants and agrees that, so long as any of the bonds remain outstanding, it will credit all accounts created by this resolution with the respective amounts as required by this resolution. Section 1.02 of the bond resolution provides in part: "This resolution shall be deemed to be and shall constitute a contract between the Commission and the Holders of Bonds and coupons".

Subparagraph 1 of section 4.03 provides that "The Treasurer shall from time to time set aside the revenues in the Illinois State Toll Highway Fund (1955) and credit to the Maintenance and Operation Account * * * until there shall have been credited to the Maintenance and Operation Account an amount equal to thirty per cent (30%) of the total of the budgeted amount for said current fiscal year or part thereof.

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As funds are withdrawn from the account from time to time for maintenance and operation expenses then the Treasurer shall credit the necessary amount to this account so that this account shall always be maintained at thirty per cent (30%) of the total amount budgeted for each current fiscal year * * *."

The aforesaid provision of subparagraph 1 of section 4.03 is clear and unambiguous. As funds are withdrawn from time to time from the Maintenance and Operation Account, the Treasurer is required to credit the necessary amounts to this account so that it "shall always be maintained" at thirty per cent (30%) of the total amount budgeted for each current fiscal year. The Treasurer must make allocations as often as is necessary to maintain the thirty per cent (30%) level.

Further, subparagraph 2 (First) of section 4.03 requires the Treasurer to make allocations to the Interest Account until there is "an amount equal to any unpaid interest * * * plus an amount equal to the interest to become due on the next ensuing interest payment date". After making this allocation the Treasurer must then credit the remaining available revenues to the other special funds in a pourover manner in the priority set out in section 4.03.

It is my opinion that the State Treasurer is the only authority who can make allocations of revenues from the Illinois State Toll Highway Fund (1955) to the various accounts

specified in section 4.03 of the bond resolution. He must make allocations of revenues as often as is necessary to maintain the Maintenance and Operation Account at a level which is thirty per cent (30%) of the total amount budgeted for each current fiscal year, as required by section 4.03 of the bond resolution. Similarly, allocations must be made as often as necessary to maintain the other accounts at their required levels.

You also ask whether interest moneys earned must be allocated back to the various accounts in proportion to each account's contribution. You cite section 4.04 of the bond resolution, which provides in pertinent part:

"Investment of Revenues. All moneys held by the Treasurer in The Illinois State Toll Highway Fund (1955) for and credited to the Interest Account, Interest Reserve Account, Sinking Fund Account, and General Reserve Account, pending their investment, shall be deposited by the Treasurer in banks * * * . Such funds shall be invested by the Treasurer upon order and direction of the Commission in United States Treasury obligations maturing in not more than ninety days from the date of such investment, except * * * . All moneys deposited under the provisions of this Section 4.04 shall be held in trust by the Treasurer and applied only in accordance with the provisions of this Resolution. All obligations purchased under the provisions of this Section 4.04 shall be deemed at all times to be a part of the respective accounts from the moneys of which they shall have been purchased. All interest and profits derived through the investment of funds credited to the respective accounts shall be credited to said respective accounts and any loss resulting from such investments shall be charged to the account for which the investment was made. * * * .

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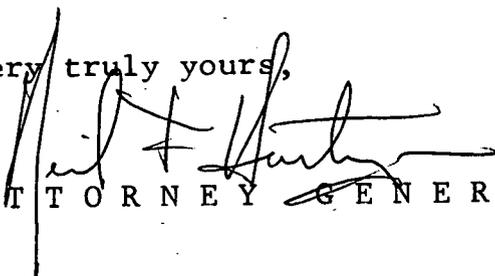
(Emphasis added.)

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The plain language of section 4.04 provides that obligations purchased pursuant to this section are deemed to be a part of the respective accounts from which money was used to purchase them. All interest derived from investment of funds is required to be credited to the respective accounts.

It is, therefore, my opinion that section 4.04 of the bond resolution requires the State Treasurer to allocate interest moneys earned, on the accounts specified in this section, back to the various accounts in proportion to each account's contribution.

Very truly yours,


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