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SPRINGFIELD

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FILE NO. 85-001

AGRICULTURE:
Administration of the Illinois
Grain Insurance Fund

Larry A. Werries, President
Illinois Grain Insurance Corporation
c/o Illinois Department of Agriculture
State Fairgrounds
Springfield, Illinois 62706

Dear Mr. Werries:

This responds to your recent inquiry regarding the administration of the Illinois Grain Insurance Fund. Specifically, you have asked the following questions:

1. Does section 6 of The Illinois Grain Insurance Act (Ill. Rev. Stat. 1983, ch. 114, par. 706) prohibit the use of Illinois Grain Insurance Fund moneys to pay service charges or fees incidental to the investment of such moneys?
2. Should claims for reimbursement to the Illinois Grain Insurance Fund be treated as part of the reserves of the Fund for purposes of determining

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whether additional assessments should be collected pursuant to subsection 5(c) of The Illinois Grain Insurance Act (Ill. Rev. Stat. 1983, ch. 114, par. 705(c))?

For the reasons hereinafter stated, it is my opinion that the Illinois Grain Insurance Corporation is not prohibited by section 6 of The Illinois Grain Insurance Act from paying service charges or fees incidental to the investment of Illinois Grain Insurance Fund moneys. Secondly, it is my opinion that claims for reimbursement to the Fund of amounts paid out as compensation for losses suffered due to failure of a grain dealer or warehouseman should not be considered reserves of the Illinois Grain Insurance Fund when determining whether additional assessments are required under subsection 5(c) of the Act.

In response to your first question, section 3 of The Illinois Grain Insurance Act (Ill. Rev. Stat. 1983, ch. 114, par. 703) provides in pertinent part:

"(a) There is hereby created the Illinois Grain Insurance Corporation, a political subdivision, body politic and municipal corporation. * * *

(b) The Corporation shall have the following powers, together with all powers incidental or necessary to the discharge thereof in corporate form:

* * *

(6) to administer the Illinois Grain Insurance Fund by investing any funds of the Corporation that the Board may determine are not

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presently needed for any of its corporate purposes;

* * *

(9) to have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation and all such incidental powers as are customary in corporations.

* * *

"

Section 6 of the Act provides in part:

"All fees assessed by the Department pursuant to Section 5 shall be held by the Corporation in trust in the Illinois Grain Insurance Fund for carrying out the purposes of this Act. These funds may be invested and re-invested in the discretion of the Corporation, and the interest from these investments shall be deposited to the credit of the Fund and shall be available for the same purposes as all other money deposited in the Fund. The money in the Fund shall not be available for any purpose other than the payment of claims pursuant to this Act, and may not be transferred to any other fund, other than the Grain Indemnity Trust Fund when necessary to compensate claimants pursuant to this Act. * * *" (Emphasis added.)

It has been suggested that the language of section 6 emphasized above, by limiting the use of Illinois Grain Insurance Fund moneys to the payment of claims pursuant to the Act, impliedly prohibits the Illinois Grain Insurance Corporation from paying service charges to financial institutions with which such moneys are invested. I am advised that such service charges are customarily required in many investment transactions, and that the inability to pay service charges might

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preclude investment in those instruments returning the highest yield.

Municipal corporations in Illinois possess not only those powers expressly granted by the constitution and by statute, but also such other powers as are necessarily implied to render the grant of specific powers effective. (Appeal Board v. U.S. Steel Corporation (1971), 48 Ill. 2d 575, 577; Higgins v. City of Galesburg (1948), 401 Ill. 87, 92; City of Rockford v. Hey (1937), 366 Ill. 526, 530; see also Ill. Const. 1970, art. VII, § 7.) This principle of law is reflected in section 3 of The Illinois Grain Insurance Act, which provides that the Illinois Grain Insurance Corporation shall have those powers expressly granted under the provisions of The Illinois Grain Insurance Act (Ill. Rev. Stat. 1983, ch. 114, par. 701 et seq.), together with such incidental powers as are necessary or appropriate to discharge those powers expressly granted.

Sections 3 and 6 of The Illinois Grain Insurance Act expressly empower the board of directors of the Illinois Grain Insurance Corporation to invest and reinvest moneys held in the Illinois Grain Insurance Fund which are not presently needed for corporate purposes. The expressly granted general power to invest such moneys includes the power to do all other things necessary to make sound investments. Clearly, where the payment of service charges is a necessary element of investing

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in high-yielding investment instruments, the express power of the board of directors of the Illinois Grain Insurance Corporation to invest funds includes the incidental power to pay such charges from its assets, the language of section 6 notwithstanding.

Moreover, it appears that the restrictive language of section 6 is intended to prohibit the diversion of Illinois Grain Insurance Fund moneys to purposes unrelated to those encompassed in the Act and to prevent the use of the corpus of the Fund for costs associated with the operation of the program, not to prohibit the use of such moneys for purposes incidental to the investment of the Fund. If the suggested interpretation of section 6 were adopted, the Illinois Grain Insurance Corporation might be precluded from investing funds in the highest quality investments available, even though additional profits, which supplement the Fund, might greatly exceed the cost of the service charges involved. To construe the Corporation's discretionary investment powers so narrowly would result in absurd consequences, and thus, that construction must be avoided. See Dugan v. Berning (1957), 11 Ill. 2d 353, 357.

Therefore, it is my opinion that section 6 of The Illinois Grain Insurance Act does not prohibit the Illinois Grain Insurance Corporation from paying service charges incidental to the investment of Illinois Grain Insurance Fund

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moneys. Further, it is my opinion that the Corporation is impliedly empowered to pay such charges.

In response to your second question, section 5 of The Illinois Grain Insurance Act (Ill. Rev. Stat. 1983, ch. 114, par. 705) provides that the Illinois Grain Insurance Fund shall be financed by assessments levied upon every grain dealer and warehouseman licensed by the Illinois Department of Agriculture. Grain producers and others who incur financial losses due to the failure of grain dealers or warehousemen are eligible to be compensated for such losses with moneys from the Illinois Grain Insurance Fund. (Ill. Rev. Stat. 1983, ch. 114, par. 708.) In turn, the Department of Agriculture is subrogated to all rights of claimants under the Act and may initiate legal action to compel grain dealers and warehousemen to reimburse the Fund for the sums paid out as a result of a failure. (Ill. Rev. Stat. 1983, ch. 114, par. 710.)

Claims for reimbursements to the Fund, as well as statutory interest accruing thereon, are treated, on the Corporation's balance sheet, as receivable assets of the Illinois Grain Insurance Corporation. Because their recovery depends upon the assets recoverable from the failed business, or its operators, claims for reimbursement, although nominally fixed in amount, may ultimately prove to be worthless. In this sense, claims for reimbursement are unlike other possible

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receivables of the Corporation, such as accrued interest on investments.

Subsection 5(c) of The Illinois Grain Insurance Act provides:

"(c) If the amount of reserves in the Fund is below \$3,000,000 at the end of the third year after establishment of the Fund or on May 1 of any year thereafter, every grain dealer and grain warehouseman subject to this Act shall be assessed by the Department a fee equal to 50% of the initial fees specified in subsections (a) and (b). If the amount of reserves in the Fund is above \$3,000,000 at the end of the third year after establishment of the Fund or on May 1 of any year thereafter, no fee shall be assessed by the Department."

Clearly, the purpose of subsection 5(c) is to provide a mechanism whereby the Illinois Grain Insurance Fund will be continuously and automatically funded in an amount of not less than \$3,000,000, without additional legislative action. The "reserves" of the Fund, for purposes of section 5 of the Act, are those assets which are, or on a date certain will be, available for compensating grain producers suffering losses due to failures.

One of the fundamental purposes of The Illinois Grain Insurance Act is "to ensure the existence of an adequate fund so that grain producers and claimants may be compensated for losses occasioned by the failure of a grain dealer or grain warehouseman". (Ill. Rev. Stat. 1983, ch. 114, par. 701.) If

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claims for reimbursement to the Illinois Grain Insurance Fund are included in the reserves of the Fund when determining whether additional assessments should be collected pursuant to subsection 5(c) of the Act, there will be no assurance of the availability of assets in the Illinois Grain Insurance Fund to pay claims. If no assets are available for payment, the General Assembly will be required to appropriate funds for such payments, a result which subsection 5(c) was obviously intended to avoid. Therefore, it is my opinion that, in order to give effect to the intent of section 5 of the Act, claims for reimbursement and statutory interest accruing on such claims should not be included in the reserves of the Illinois Grain Insurance Fund for purposes of ascertaining whether additional assessments are required. Receivables such as accrued interest on investments, however, should be included in computation of reserves.

Very truly yours,



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