



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

May 6, 1997

FILE No. 97-011

TOWNSHIPS:
Transfer of Funds from
General Assistance Fund

Honorable Doug Floski
State's Attorney, Ogle County
110 South Fourth Street
Oregon, Illinois 61061-0395

Dear Mr. Floski:

I have your letter wherein you inquire whether a township board may lend money from the township general assistance fund to another township fund to be repaid over a number of years, and, if not, what remedies are available to the State's Attorney or township residents for redress. For the reasons hereinafter stated, it is my opinion that a town board has no authority to lend general assistance funds to other town funds. The availability of remedies will depend upon the specific facts of the case.

You have stated that, in November, 1994, a certain township board authorized the borrowing of \$46,000 from its general assistance fund for the purchase of a truck for the

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township. The loan was to be repaid at \$2000 per year at 0% interest. No payment was made in 1995. In March, 1996, the town board voted to make a \$5000 payment on the loan from the township road and bridge fund. No other payments have been made.

The general assistance fund is generated through the general assistance tax authorized by section 235-20 of the Township Code (60 ILCS 1/235-20 (West 1994)), which provides, in part:

"(a) The township board may raise money by taxation deemed necessary to be expended to provide general assistance in the township to persons needing that assistance as provided in the Illinois Public Aid Code * * *. The tax for each fiscal year shall not be more than 0.10% of value, or more than an amount approved at a referendum held under this Section * * * and shall in no case exceed the amount needed in the township for general assistance.

* * *

(d) Any taxes levied for general assistance before or after this Section takes effect may also be used for the payment of warrants issued against and in anticipation of those taxes and accrued interest on those warrants and may also be used to pay the cost of administering that assistance.

* * *

"

Subsection 235-20(e) (60 ILCS 1/235-20(e) (West 1994)) provides that a qualifying township could, prior to the end of fiscal year 1992, make a one-time transfer from its general assistance fund to its general fund. That provision, by its terms, is no longer

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available, and the transaction under consideration does not fall within it.

It has generally been held that idle money in one fund may be transferred to another fund as a temporary loan from one fund to the other. (Gates v. Sweitzer (1932), 347 Ill. 353, 359; Town of Thornton v. Winterhoff (1950), 406 Ill. 113, 118; 1975 Ill. Att'y Gen. Op. 92.) None of the authorities addressing such temporary transfers has dealt with general assistance funds, however, nor has any addressed the propriety of a transfer that amounts to a financing arrangement intended to span more than 20 years.

Gates v. Sweitzer concerned a challenge to a levy for a park district bond fund. The bond principal and interest had been paid in a previous year from other idle funds of the district when the tax collected in that previous year fell short of the amount due. The challenged levy was for the purpose of repaying the borrowed funds. The court upheld the levy, concluding that if municipal officers could borrow money from one fund to prevent a default in another, then it was proper to levy, according to law, for the fund responsible for repayment. With respect to the propriety of borrowing among funds the court stated:

" * * *

Municipal officers have no right to divert moneys from one fund to another and different fund for which it was not appropri-

ated. But the word 'divert' is used in the sense of turning such fund permanently from its purpose or the final appropriation of it to some other use. If, as counsel for appellees argue, the commissioners had a right to, and did, temporarily borrow sufficient idle bond funds or other funds for the benefit of a fund having a stated and sufficient income to re-pay the sum borrowed, as the bond fund had, and with the intention that it shall be so re-paid, such is not a diversion of funds, for the fund from which the money is taken holds the credit against bond interest and principal fund and is not depleted. * * *

* * *

Gates v. Sweitzer (1932), 347 Ill. 353, 359. "

In Town of Thornton v. Winterhoff (1950), 406 Ill. 113, taxpayers sought recovery on a town supervisor's bond after the supervisor paid certain tax anticipation warrants from money other than the tax against which the warrants were drawn. The supervisor was able to show that the tax collected from which the warrants should have been paid was sufficient to pay these warrants and all others drawn against it. However, all township funds had been commingled and paid out without regard to any particular fund to which they were supposed to be allocated. Because the fund from which the warrants should have been paid was sufficient, and because the township suffered no loss, the court denied recovery, citing the holding in Gates v. Sweitzer quoted above.

In People ex rel. Redfern v. Penn Central Co. (1971), 47 Ill. 2d 412, and in People ex rel. Brenza v. Gilbert (1951), 409 Ill. 29, the court ruled that temporary transfers among the

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funds at issue were unlawful and not authorized because the statutes governing the funds from which money was borrowed impliedly prohibited their use for such purposes.

In People ex rel. Redfern v. Penn Central Co., the transfer was from a school district education fund to the municipal retirement fund. The transfer was carried on the books as a loan for more than one year. A section of the School Code (Ill. Rev. Stat. 1969, ch. 122, par. 10-22.33) permitted transfers for less than one year between the education fund and the building fund. The section impliedly prohibited transfers for longer than one year from the education fund to other funds. However, the court overruled objections to the tax levy for the education fund, as the loan was carried as an asset of the education fund, and there was no evidence that it was not accounted for as such when the district set its levy.

In People ex rel. Brenza v. Gilbert, a county borrowed from its working cash fund to cover expenses of the county highway fund. The statute authorizing the working cash fund (Ill. Rev. Stat. 1947, ch. 34, par. 110a-110f) expressly provided that it was to be used only for specified purposes, and advancing money to the highway fund was not among those purposes. However, the court refused to sustain objections to a levy for the highway fund where the purpose of the levy was to repay the loan. The court reasoned that prohibiting the levy would only make permanent what was otherwise a temporary unlawful transfer.

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The court has reached a different conclusion where the evidence indicates that a timely repayment of transferred funds is not intended and that the effect of the transfer is to augment a fund for which an increased levy is not authorized. Such were the circumstances in People ex rel. Meyers v. Chicago & N.W. Ry. Co. (1953), 1 Ill. 2d 255 and in People ex rel. Harding v. Chicago & N.W. Ry. Co. (1952), 413 Ill. 93. In each case, a school district declared "unneeded" money in its building fund and transferred the money to its education fund. Within two months thereafter, each district adopted a levy ordinance intended, in essence, to replace the money transferred from its building fund. The court in each case struck down the portion of the building fund levy which would have replaced the amount transferred. The pattern of conduct was considered a subterfuge to augment the education fund through the building fund levy. People ex rel. Meyers v. Chicago & N.W. Ry. Co. (1953), 1 Ill. 2d 255, 263; People ex rel. Harding v. Chicago & N.W. Ry. Co. (1952), 413 Ill. 93, 99.

The statute authorizing the general assistance tax levy, quoted above, specifically states that it is to provide assistance as provided in the Illinois Public Aid Code (305 ILCS 5/1-1 et seq. (West 1994)); that the tax shall in no case exceed the amount needed for that purpose; and that it may also be used for payment of warrants issued in anticipation of those taxes and for the cost of administering assistance. Generally, a tax which

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is raised for a particular purpose cannot be used for other purposes. (People ex rel. Pollock v. Chicago, Terre Haute & Southeastern Ry. Co. (1925), 315 Ill. 589, 591; McFarland v. Town of Bourbonnais (1950), 339 Ill. App. 328, 334.) Further, the fact that a statute includes one or more specific exceptions is ordinarily construed to exclude any other exceptions. (People ex rel. Difanis v. Barr (1980), 83 Ill. 2d 191, 199.) Based upon the language of the section itself, and these authorities, it is my opinion that the use of general assistance funds for purposes other than those provided in section 235-20 of the Township Code is prohibited.

Because the use of general assistance funds for other purposes is prohibited, even temporary transfers from a general assistance fund to other funds are unauthorized. Moreover, a transfer which is not intended to be repaid in full for more than 20 years cannot be viewed as temporary in the sense that term is used in the cases discussed above. Most of those cases involved less than three years between loan and repayment. Although Town of Thornton v. Winterhoff involved approximately 13 years between the issuance and payment of the tax anticipation warrants, the funds between which "transfers" were made were fully commingled during much of that time, a practice not condoned by the court. The use of general assistance funds for other purposes for as long as 20 years can, in my opinion, only be viewed as an unlawful diversion of those funds.

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What is the most appropriate remedy for the diversion of general assistance funds to other purposes may depend upon the overall financing and taxing policies of the township in question, as well as the good faith of the officials responsible. Each of the cases cited above involved action initiated by one or more taxpayers. In several, the taxpayers either refused to pay taxes or paid under protest, defending the ensuing collection action by challenging the validity of a levy for the fund from which funds were "borrowed". A levy for the township general assistance fund might be challenged in this manner as being excessive since, in the absence of the "loan", the levy would exceed the amount needed for general assistance. A taxpayer action may, alternatively, directly challenge the levy as was done in Gates v. Sweitzer, or seek the repayment of tax funds improperly expended. Under appropriate circumstances, taxpayers may sue on behalf of the township to recover on the official bond of the supervisor (60 ILCS 1/150-45 (West 1994)), as was attempted in Town of Thornton v. Winterhoff. In such a case, damage to the township must be proved.

The State's Attorney's authority to seek a remedy in these circumstances is relatively narrow. While a State's Attorney may seek recovery of money accruing to the State, the county, a school district or a road district, that authority does not extend to matters affecting townships. (55 ILCS 5/3-9005 (West 1994).) If the actions of the town officers who implement-

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ed the transfer were sufficiently egregious, criminal penalties may be appropriate. Section 55-37 of the Township Code (60 ILCS 1/55-37 (West 1994)) provides that a township officer who is guilty of willful and corrupt oppression, malconduct or misfeasance in office, may be fined up to \$1000. Further, section 8A-5 of the Public Aid Code (305 ILCS 5/8A-5 (West 1994)) defines the offense of administrative malfeasance, which includes misappropriation of public funds made available for public aid purposes. While citing these provisions for your review and consideration, I express no opinion regarding the liability of any particular officer; establishing liability would require a factual determination that I cannot make.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke at the end.

JAMES E. RYAN
ATTORNEY GENERAL