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STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 81-004

FINANCE:

Deposit of State Moneys in
Bank Accounts by the
State Treasurer

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

Dear Mr. Cosentino:

I have your letter wherein you inquire whether Public Act 81-1181 [House Bill 1693], effective July 1, 1980, affects your duties as State Treasurer or the present operation of your office in the investment of State moneys. For the reasons hereinafter stated, it is my opinion that the provisions of Public Act 81-1181 do not apply to the deposit of State moneys. Rather, the deposit of State moneys is governed by the provisions of "AN ACT in relation to State moneys" [State Moneys Act]. (Ill. Rev. Stat. 1979, ch. 130, par. 20 et seq.).

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Public Act 81-1181 amended section 1 of "AN ACT in relation to the deposit of public funds" [Public Funds Act] (Ill. Rev. Stat. 1979 Supp., ch. 102, par. 34), to provide that any treasurer or custodian of public funds shall deposit so much of said funds as are not immediately needed in interest-bearing accounts at prevailing rates or better. Your letter states that you and your predecessors have deposited funds in the State Treasury pursuant to the provisions of the State Moneys Act. That Act, adopted in 1919, applies only to the deposit of State moneys by the State Treasurer and does not require a deposit to be made at prevailing rates of interest or better. It provides only that interest shall be paid on time deposits.

Stated another way, your question is whether the Public Funds Act, as amended by Public Act 81-1181, amends or repeals by implication such provisions of the State Moneys Act as conflict with the provisions of Public Act 81-1181. It is clear that such amendment or implied repeal was not the intent of Public Act 81-1181.

The State Moneys Act applies only to the State Treasurer, and governs specifically the investment of State funds. The Public Funds Act applies to public funds in general. Public Act 81-1181 amended section 1 of the Public Funds Act to provide in pertinent part:

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"Any treasurer or other custodian of public funds may deposit such funds in a State or national bank in this State. When such deposits become collected funds and are not needed for immediate disbursement, they shall be invested within 2 working days at prevailing rates or better. The treasurer or other custodian of public funds may require such bank to deposit with him securities equal in market value to the amount of the funds deposited. * * *

* * *

(Emphasis added.)

The amended portion of the above section is underscored.

The provisions of the State Moneys Act conflict in various respects with those of the Public Funds Act. Most importantly, section 1 of the State Moneys Act requires the State Treasurer to deposit all moneys received by him within five days. Section 2 of the State Moneys Act provides that all banks in which any such money is deposited shall be required to pay interest on time deposit accounts. Section 3 of the State Moneys Act requires the State Treasurer to send out, at least annually, a notice of the date he will receive bids for State deposits. Section 4 of the State Moneys Act provides for two classes of deposits: time deposits and demand deposits.

You advise that during the past 14 years, three programs have been developed under which bids from banks for time deposits are received. Deposits under these programs are not always made at prevailing rates.

In the Basic Deposit Award Program, interest rate bid, loans outstanding, and size of the bank are the factors to which

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consideration is given. In the Community Service Deposit Program, the types of loans which you consider community service oriented are evaluated along with the interest rate bid. In the Specific Opportunity Program, funds are allocated to targeted areas which have experienced a disaster. In the past there have been programs for tornadoes, corn blight, harvest failures and floods, and there have been social programs for neighborhood rehabilitation, sewage treatment plant expansions, pollution abatement and low interest rate residential mortgages.

You point out that if Public Act 81-1181 applies to funds in the State Treasury, it would destroy these programs and paralyze the present bid process. You also emphasize that House Bill 1693 amended section 2 of "AN ACT relating to certain investments of public funds by public agencies" (Ill. Rev. Stat. 1979 Supp., ch. 85, par. 902) governing the investment of public funds and section 6.2 of "AN ACT concerning county treasurers, etc." (Ill. Rev. Stat. 1979 Supp., ch. 36, par. 22.2) relating to the investment of county moneys apparently in order to reduce the investment lag period from the previous 30 days to two days. However, no provision of the State Moneys Act was amended by Public Act 81-1181. In addition, as you note, section 2 of the Public Funds Act provides:

"Nothing in this Act shall be construed to preclude the deposit of public funds in accordance with any other Act applicable thereto or to subject any treasurer or other custodian to any liability to which he would not be subject in the absence of this Act."

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I agree with your conclusion that Public Act 81-1181 does not affect the deposit of moneys in your custody. Such a conclusion is required by the express terms of section 2 of the Public Funds Act and by the express requirements of the State Moneys Act.

Further, the principles of statutory construction require the same result. Where two Acts relate to the same subject, they are said to be in pari materia. The Public Funds Act is a general Act applicable generally to the custodians of public funds. The State Moneys Act concerns particularly the duties of the State Treasurer. Both Acts deal with the deposit of funds in bank accounts and with the interest rate to be obtained thereof. In construing such Acts, the general rule is that where there are two acts, one a particular act and the other a general act, the particular act must be given the effect of establishing an exception to the general act, and a later general statute, not expressly repealing the prior special statute, will ordinarily not affect the special provisions of the earlier statute. The People v. Bd. of Commissioners (1931), 345 Ill. 172, 178.

Another rule of statutory construction requires the same result. If Public Act 81-1181 were construed to repeal or amend portions of the State Moneys Act there would be a repeal or amendment by implication. Repeals by implication are not favored. Kizer v. City of Mattoon (1928), 332 Ill. 545, 548-9.

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Therefore, it is clear that section 1 of the Public Funds Act, as amended by Public Act 81-1181, does not apply to the deposit of State moneys by the State Treasurer, nor does it require the State Treasurer to deposit State moneys at prevailing interest rates or better.

Very truly yours,

ATTORNEY GENERAL