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STATE MATTERS:
Non-Appropriations of
Funds Clause

R. Bruce Waddell, Chairman
Data Information Systems Commission
2015 Stratton Building
Springfield, Illinois 62706

Dear Mr. Waddell:

I have your letter wherein you ask whether State leases which contain non-appropriations of funds clauses are valid. You are especially interested in leases of electronic data processing equipment. You note that some State leases of this type of equipment contain the following provision:

"NON-APPROPRIATIONS CLAUSE"

Any resulting lease will contain the State of Illinois Standard Non-Appropriations of Funds Clause:

Notwithstanding any contrary provision in the Lease, the STATE may, at its option, exercised by thirty (30) days prior written notice to LESSOR, terminate the term of this Lease as of the end of any month during the term hereof if funds authorized, appropriated, or allocated to it for the rental or acquisition of this or functionally similar equipment have been exhausted and it is not otherwise able to

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meet its obligations hereunder. However, the STATE agrees that: (i) any funds authorized, appropriated, or allocated to it for the rental or acquisition of this or functionally similar equipment in any fiscal year shall be applied to the payment of Monthly Charges hereunder until such funds are exhausted; (ii) it has not to date and will not in the future agree to give priority or parity to the application of such funds to the lease or acquisition of other functionally similar equipment; and (iii) it will use its best efforts to obtain authorization and appropriations of such funds including, without limitations, the inclusion in its budget request for each fiscal year during the term hereof, a request for adequate funds to meet its obligations in full."

Section 9 of article IX of the Illinois Constituion of 1970 limits the power of State agencies to contract on behalf of the State. State agencies may incur State debt only according to the provisions of section 9 of article IX. In addition to this constitutional restriction, the General Assembly has provided generally that a State agency may not contract for any indebtedness in excess of its appropriation. Section 30 of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1977, ch. 127, par. 166) provides as follows:

"No officer, instituion, department board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

Section 5.1 of The Illinois Purchasing Act (Ill. Rev. Stat. 1977, ch. 127, par. 132.5-1) authorizes State agencies to enter into contracts for the leasing of electronic

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data processing equipment. Section 5.1, however, does not authorize State agencies to incur State debt nor does it authorize agencies to contract for indebtedness in excess of their appropriations. In the absence of such authorization, State agencies may not enter into contracts for the lease of computer equipment which create State debt or bind the State in an amount which is in excess of the money appropriated.

With this rule established, the issue to be resolved is whether leases of computer equipment which contain the non-appropriations of funds clause, quoted above, create State debt or bind the State in excess of the State agency's appropriation. The lessor's claim to State funds is expressly conditioned upon their being appropriated. The legislature can terminate the lessor's claim by refusing to appropriate funds for computer equipment. The recognition in the clause of the legislature's exclusive authority to appropriate State funds resolves doubts regarding the clause's validity under section 9 of article IX and section 30 of "AN ACT in relation to State finance." The clause does not create State debt because it commits only those funds which are appropriated. Furthermore, since the clause conditions the payment of funds to the lessor on their being appropriated, the clause does not bind the State in an amount which is in excess of the State agency's appropriation. It is therefore my opinion that the terms of the non-appropriations of funds

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clause, quoted above, do not violate the State debt provisions of the Illinois Constitution or the provisions of section 30 of "AN ACT in relation to State finance" and that, at least in this regard, leases of computer equipment which contain the non-appropriations of funds clause are valid.

The clause does obligate the State agency to pay to the lessor any funds appropriated for the lease of computer equipment and to use its best efforts to obtain appropriations for the lease of the equipment. Contracts which unreasonably restrain the State are invalid. (81A C.J.S. States §156; cf. 1974 Ill. Att'y Gen. Op. 227.) Where, however, a State contract which extends for a period of years appears to accomplish a legitimate public purpose, it must be presumed that the contract is proper unless evidence to the contrary is produced. (Butler v. Hatfield (1967), 277 Minn. 314, 152 N.W. 2d 484.) It is my understanding that in many cases it is financially impractical to lease expensive electronic data processing equipment for a single year. In these instances, a lease of more than one year is the only feasible method for the State to obtain such equipment. Thus, a State agency's promises to use appropriated funds to make future payments to the lessor and to use

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its best efforts to obtain appropriations appear to be proper. The agency's promises are valid on their face.

Very truly yours,

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