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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

November 10, 1982

FILE NO. 82-040

STATE MATTERS:
Propriety of Proposed Agreement
Between Capital Development Board
and Chicago Regional Port District

Edward T. Smith
Acting Executive Director
Capital Development Board
3rd Floor/William G. Stratton Building
401 South Spring Street
Springfield, Illinois 62706

Dear Director Smith:

I have your letter in which you advise that the Chicago Regional Port District has proposed that the District and the Capital Development Board enter into an agreement supplementing a contract entered into between the parties on October 6, 1978, and supplemented by an agreement dated February 25, 1980. You inquire whether the proposed second supplemental agreement implements section 13 of the Capital

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Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783), as amended, and protects the interests of the State of Illinois. It is my opinion that the answers to your questions are in the affirmative.

You point out that section 13 of the Capital Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783) authorizes the Capital Development Board to provide cargo handling facilities for the use of regional port districts. Section 13 also sets up a payback procedure under which the regional port districts are required to remit to the State of Illinois 20% of the gross receipts attributable to those facilities until such time as the full amount appropriated or expended by the State of Illinois for the facility has been remitted to the State.

As you note in your letter, the Chicago Regional Port District was created in 1951 by the Chicago Regional Port District Act (Ill. Rev. Stat. 1981, ch. 19, par. 152 et seq.). Section 9.01 of that Act (Ill. Rev. Stat. 1981, ch. 19, par. 160.1) authorizes the District to issue revenue bonds or certificates pursuant to ordinance adopted by the Chicago Regional Port District Board. Pursuant to the bond ordinance adopted by the Port District Board in 1955, bonds in the amount of \$24,000,000 were issued. Section 7.04 of the 1955 ordinance provides in pertinent part:

"No Lien Except Lien and Charge of Bonds. The

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District covenants that the District will not issue any bonds or other evidences of indebtedness, except pursuant to the requirements of this Ordinance, secured by a pledge of the revenues from the facilities and that it will not create or suffer to be created any lien or charge upon the facilities or any part thereof or upon the revenues except the lien and charge of the Bonds secured hereby upon such revenues, or such additional bonds that may be issued pursuant to the provisions of this Ordinance, * * * ."

This provision of the bond ordinance prohibits the Port District from issuing any bonds or other evidences of indebtedness secured by a pledge of the revenues from the facilities. It also prohibits the Port District from creating or suffering to be created any lien or charge upon the facilities or any part thereof, or upon the revenues.

You advise that, pursuant to section 13 of the Capital Development Board Act (Ill. Rev Stat. 1981, ch. 127, par. 783), the Capital Development Board and the Chicago Regional Port District entered into a contract dated October 6, 1978. The Capital Development Board agreed to provide funds to the District for the acquisition of containerized cargo handling facilities, buildings, and for the acquisition of certain real estate. The District agreed to remit to the State of Illinois twenty percent (20%) of the gross receipts attributable to the operation of the described cargo handling facilities, until such time as the amount appropriated and expended by the State has been remitted to the State. The contract was amended by a supplemental agreement dated February 25, 1980.

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The latest financial statement pertaining to the Port District's accounts has, as a footnote, a statement that identifies the contract with the Capital Development Board as a potential violation of section 7.04 of the bond ordinance which, as noted above, prohibits the Port District from issuing evidences of indebtedness secured by a pledge of the revenues from the facilities or any part thereof, or upon the revenues.

Section 13 of the Capital Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783) was amended by Public Act 81-1420, effective August 29, 1980, to read as follows:

"The Board may provide cargo handling facilities for the use of regional port districts. Pursuant to appropriations setting forth specific projects and regional port districts, the Board shall contract with the regional port district named in the Act making the appropriation for cargo handling facilities. Such contract shall provide that the regional port district shall remit to the State of Illinois 20% of the gross receipts attributable to those facilities, whether collected by the regional port district or through an operator or other intermediary, until the full amount appropriated and expended by the State of Illinois has been remitted to the State. The 20% gross receipt payback is subordinate solely to any outstanding public bond agreements existing at the time of the contract and solely for the period of time of the running of those bond agreements.

* * *

(Emphasis added.)

The language added by Public Act 81-1420 is underscored.

The proposed second supplemental agreement refers to the provision of Public Act 81-1420 which provides that the 20% gross receipt payback obligation is subordinate to any out-

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standing public bond agreements existing at the time of the contract. Reference is also made in the proposed second supplemental agreement to section 7.05 of the bond ordinance, which prohibits the Port District from issuing any evidence of indebtedness secured by a pledge of revenues from its facilities, or from suffering to be created any charge upon the facilities or upon the revenues. Under the second supplemental agreement the Port District would be required to "remit to the State of Illinois amounts equal to 20% of the gross receipts (as hereinafter defined) attributable to the operation of the described cargo handling facilities * * * provided, that the District shall pay such amounts to the State from and to the extent of moneys available for such use in the Surplus Account as of the close of the District's fiscal year. * * *". Thus, the second supplemental agreement clearly subordinates the 20% gross receipt payback requirement to the bond ordinance in accordance with section 13 of the Capital Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783), as amended by Public Act 81-1420. The second supplemental agreement requires that the 20% gross receipt payback attributable to the cargo handling facilities be paid only to the extent that moneys are available for such use in the surplus account. Such use of moneys in the surplus account is authorized by the bond resolution.

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The bond ordinance establishes a series of pourovers.
Section 4.03 of the ordinance provides in part:

"Establishment of Accounts. All of the revenues derived from the facilities shall be deposited with the Treasurer and shall be credited in the following order of priority to the following respective accounts, viz.:

1. Maintenance and Operation Accounts.
2. Interest Account.
3. Maintenance Reserve Account.
4. Renewal and Replacement Account.
5. Interest Reserve Account.
6. Sinking Fund Account.
7. Surplus Account.

Each of said accounts is hereby created and each of which the District 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:

* * *

"

Section 4.03 requires all of the revenues derived from the facilities to be credited in a certain order of priority. Section 1.01(r) of the ordinance defines "facilities" as "the port and terminal facilities described in section 2.02 of Article II hereof, including any improvement, extension, expansion or enlargement thereof, and any additional facilities subsequently acquired or constructed by the District". Section 1.01(s) defines "revenues" as "all income derived from

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licenses, concessions, fees, rentals and all other revenue from whatever source derived from the operation, regulation and maintenance of the facilities of the District". If the District failed to credit all of its revenue from all of its facilities, including improvements and additional facilities, in the order of priority required by section 4.03 of the bond ordinance, it could be in violation of section 4.03.

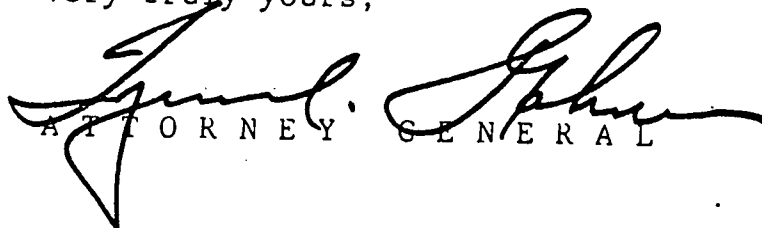
The proposed second supplemental agreement, however, provides that "the District is obligated to pay to the State of Illinois amounts equal to 20% of the gross receipts attributable to the facilities financed under the contract from and to the extent of money available for such use in the surplus account". Section 4.03(2)(Sixth) of the bond ordinance authorizes the use of moneys in the surplus account, after making up any deficiencies in any account having priority, for "any other expenditures now or hereafter authorized by the Law for the improvement, extension, enlargement or expansion of the facilities of said District * * * or for the acquisition or construction of additional facilities * * * ". Moneys in the surplus account will, therefore, be used for the acquisition or construction of additional facilities (cargo handling facilities). Such use is authorized by the plain language of section 4.03(2)(Sixth) of the bond ordinance. There would, therefore, be no violation of the provisions of this bond ordinance.

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You ask whether the proposed second supplemental agreement implements the amendment made by Public Act 81-1420 to section 13 of the Capital Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783). As you know, this amendment provides that 20% gross receipt payback to the State of Illinois is subordinate to any outstanding public bond agreements existing at the time of the contract. The 20% gross receipt payback, does become subordinate to the bond ordinance by a requirement that this payback be made in a manner permitted by the bond ordinance - from the surplus account. The interests of the People of the State of Illinois are protected because the agreement permits the State of Illinois to receive a payback in a lawful manner. A contract must not violate a statute or else it is void. Duck Island Club v. Gillen Co. (1928), 330 Ill. 121, 132; DeKam et al. v. City of Streator et al. (1925), 316 Ill. 123, 131.

Therefore, it is my opinion that the proposed second supplemental agreement implements Public Act 81-1420, which amended section 13 of the Capital Development Board Act (Ill. Rev. Stat. 1981, ch. 127, par. 783), and that the interests of the People of the State of Illinois are protected.

Very truly yours,


ATTORNEY GENERAL