

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 31, 2008

FILE NO. 08-004

FINANCE:
Payment of Unexpended Proceeds from Sale
of Medical District Property into State Treasury

Mr. Samuel W. Pruett, Executive Director
Illinois Medical District Commission
600 South Hoyne Avenue
Chicago, Illinois 60612

Dear Mr. Pruett:

I have your letter inquiring whether section 10 of the Illinois Medical District Act (the Act) (70 ILCS 915/10 (West 2006)) requires the Illinois Medical District Commission (the Commission) to remit to the State Treasury proceeds from the sale of real property that remain on hand at the end of the fiscal year if the proceeds have been "committed and obligated by the Commission for authorized purposes under the Act[.]" For the reasons discussed below, it is my opinion that section 10 of the Act requires the Commission, by July 10 of each year, to transmit to the State Treasury all proceeds from the sale of property that exceed \$350,000 and that (1) were not paid out, (2) are not necessary to satisfy revenue bond obligations, or (3) are not required to pay enforceable contractual obligations existing as of June 30 and to be paid no later than September 30 of that year. Additionally, any funds that the Commission retains to satisfy

existing contractual obligations but does not actually pay out by September 30 must be transmitted to the State Treasury for deposit no later than October 10.

BACKGROUND

Your inquiry arises out of an audit finding that the Illinois Medical District received during an audit conducted by the Auditor General for the year ending June 30, 2005. The audit finding was repeated during audits for the years ending June 30, 2006, and June 30, 2007. The finding relates to the Commission's sale of real property to the Federal government in late fiscal year 2004, resulting in proceeds that totaled over \$10,688,767. After the sale, the Commission passed a resolution dated June 15, 2004, committing and obligating the unexpended sale proceeds to specific, future purposes, including new facility construction in the District, capital improvements to existing Commission facilities, utility relocations and improvements within the District, and the repayment of debt obligations. As of June 30, 2004, approximately \$8,152,049 of the sale proceeds remained on-hand.

The Auditor General's position is that section 10 of the Act requires the Commission to remit to the State Treasury all monies from the sale of Illinois Medical District property in excess of \$350,000 and on hand as of June 30. The Auditor General maintains that the Commission may retain funds in excess of \$350,000 only to the extent necessary to liquidate enforceable contractual obligations existing as of June 30, as long as those obligations are liquidated by September 30 (the close of the lapse period for the expenditure of funds appropriated for the previous fiscal year). In contrast, the Commission contends that because it had "committed and obligated" the excess funds prior to June 30, 2004, they were "expended" as of that date and were therefore outside the scope of section 10. To determine which

interpretation is correct, it is necessary to examine the powers and duties of the Commission, and the limitations that the General Assembly has placed on the Commission.

Illinois Medical District Commission

In 1941, the General Assembly created the Illinois Medical District (the District)¹ and the Commission. *See* 1941 Ill. Laws 303. The Commission is a body politic and corporate comprised of seven members who serve five-year terms, four of whom are appointed by the Governor, two by the mayor of the City of Chicago, and one by the president of the Cook County Board. 70 ILCS 915/2(a), (b) (West 2006). The Commission's duties include maintaining the proper surroundings for a medical center and related technology center to attract, stabilize, and retain hospitals, clinics, research facilities, educational facilities, or other facilities permitted under the Act, and providing for the creation and expansion of various other facilities specified in the Act. 70 ILCS 915/2(a) (West 2006).

The Act authorizes the Commission to acquire real and personal property for its purposes by gift, purchase, lease, or otherwise. 70 ILCS 915/3 (West 2006). The Commission may borrow money from any public or private agency, department, corporation, or person to obtain the funds necessary to finance the acquisition of land, construction of buildings, and operation of the District, and may issue revenue bonds to be payable from the revenues derived from the operation of the institutions or buildings that the Commission owns, leases, or operates. 70 ILCS 915/5 (West 2006). The Commission may sell, convey, transfer, or lease any title or interest in real estate to be used for the purposes stated in the Act, subject to any use restrictions

¹The District was initially named the Illinois Medical Center. The General Assembly changed the name to the Illinois Medical District by enacting Public Act 89-356, effective August 17, 1995.

that the Commission determines are necessary to carry out the Act's purposes. 70 ILCS 915/6 (West 2006). The Commission may not convey real property, however, without the prior written approval of the Governor. 70 ILCS 915/6 (West 2006).

Section 10 of the Illinois Medical District Act

Section 10 of the Act provides:

All money received by the Commission from the sale or lease of any property, in excess of such amount expended by the Commission for authorized purposes under this Act or as may be necessary to satisfy the obligation of any revenue bond issued pursuant to Section 5, shall be paid into the State Treasury for deposit into the Medical Center Commission Income Fund provided, however, the Commission is authorized to use all money received as rentals for the purposes of planning, acquisition, and development of property within the District and operation, maintenance and improvement of property of the Commission and for all purposes and powers set forth in this Act. Beginning in 1993, not later than July 10 of each year, the Commission shall transmit to the State Treasurer for deposit into the Medical Center Commission Income Fund^[2] all monies on hand at June 30 in excess of \$350,000 without deduction or offset of any kind, except that the Commission may retain such additional funds as are necessary to pay enforceable contractual obligations existing as of June 30 and which will be paid not later than September 30 of that year. All monies retained for the payment of these obligations and

²The General Assembly repealed section 5.90 of the State Finance Act (30 ILCS 105/5.90 (West 2006)), which established the Medical Center Commission Income Fund (Income Fund) as a special fund in the State Treasury, by Public Act 95-331, effective August 21, 2007. According to information provided by the Illinois Comptroller's office, this repeal resulted from the termination of the Income Fund by operation of law. In this regard, subsection 5(c) of the State Finance Act (30 ILCS 105/5(c) (West 2006)) states:

When any special fund in the State Treasury has been inactive for 18 months or longer, the fund is automatically terminated by operation of law and the balance remaining in such fund shall be transferred by the Comptroller to the General Revenue Fund. When a special fund has been terminated by operation of law as provided in this Section, the General Assembly shall repeal or amend all Sections of the statutes creating or otherwise referring to that fund.

The repeal of section 5.90 of the State Finance Act does not affect my analysis or conclusion. The General Assembly may simply recreate the Income Fund, create another special fund for the Commission's use, or permit the transfer of the monies into the General Revenue Fund, as it deems appropriate.

not paid out by September 30, shall be remitted in full to the State Treasury, without deduction or offset of any kind, not later than October 10 of the same year. (Emphasis added.)

In opinion No. S-1356, issued April 13, 1978 (1978 Ill. Att'y Gen. Op. 106), Attorney General Scott considered the legality of certain proposed expenditures of income received from the rental or sale of Commission properties. In addressing the validity of the proposed expenditures, the Attorney General summarized the purpose of section 10's limitation on the accumulation of funds:

In section 10, the General Assembly has limited the amount of money which the Commission may accumulate. The limitation on the use of the funds prevents the Commission from acquiring a large reserve of property or funds. State agencies have no inherent right to keep money generated or produced from public funds. This limitation also allows the General Assembly to monitor the use of these funds. The General Assembly, which has appropriated money to the Commission to acquire property, has determined that when the property is sold or leased the income in excess of \$10,000 that is not used to pay bonds or used for the operation, maintenance or improvement of the property of the Commission must be returned to the State Treasury. The General Assembly then has the discretion to appropriate it for additional acquisitions or to put it to other uses. (Emphasis added.) 1978 Ill. Att'y Gen. Op. 106, 108.³

³When Attorney General Scott issued opinion No. S-1356, section 10 of the Act (Ill. Rev. Stat. 1975, ch. 91, par. 134) provided:

All money received by the Commission from the sale or lease of any property, in excess of such amount as may be necessary to satisfy the obligation of any revenue bond issued pursuant to Section 5, shall be paid into the State Treasury as provided in "An Act in relation to the payment and disposition of moneys received for or on behalf of the State", approved June 9, 1911, as heretofore or hereafter amended, provided, however, the Commission is authorized to use all money received as rentals for the purposes of operation, maintenance and improvement of property of the Commission, but all money so received in excess of \$10,000.00 and not expended pursuant to this section, shall be paid into the State Treasury as above provided. The Auditor General shall, at least biennially, audit or cause to be audited all records and accounts of the Commission pertaining to the operation of the District.

After Attorney General Scott issued this opinion, the General Assembly replaced the language previously requiring unexpended funds in excess of \$10,000 to be paid into the State Treasury with language similar to the current provisions of section 10. See Public Act 81-1495, effective September 19, 1980.⁴

The language amending section 10 in Public Act 81-1495 originally appeared in House Bill 3101.⁵ During debate on this bill, the sponsor stated:

It has been amended to increase the amount of money to be retained locally to a hundred thousand dollars. It also provides for the payment of items during lapse period. This is another effort on the part of Legislative Audit Commission in corporation [*sic*] with the Auditor General to see that money spent by these agencies are appropriated funds and I believe now that this Amendment takes care of any problem it had. Remarks of Rep. Friedrich, May 16, 1980, House Debate on House Bill No. 3101, at 82.

The House included the provisions of House Bill 3101 in House Bill 3487, which became Public Act 81-1495. When asked why the Commission needed to keep \$100,000 on hand, the Senate sponsor of House Bill 3487 replied:

⁴With respect to retention of funds, Public Act 81-1495 specifically provided:

Not later than July 10 of each year, the Commission shall transmit to the State Treasurer for deposit into the Medical Center Commission Income Fund all monies on hand at June 30 in excess of \$100,000 without deduction or offset of any kind, except that the Commission may retain such additional funds as are necessary to pay enforceable contractual obligations existing as of June 30 and which will be paid not later than September 30 of that year. All monies retained for the payment of these obligations and not paid out by September 30, shall be remitted in full to the State Treasury, without deduction or offset of any kind, not later than October 10 of the same year. All monies held pursuant to this Section shall be maintained in a depository approved by the State Treasurer.

⁵House Bill 3101 of the 81st General Assembly died *sine die*.

this is money that the commission receives as income from the properties that it owns in the district * * *. We're just providing that this excess money, instead of being returned to the State Treasury, and any monies over one hundred thousand would have to be returned; but under one hundred thousand, the money can be used to purchase new real estate in the Medical Center Commission district, that the commission needs for its purposes. Remarks of Sen. D'Arco, June 25, 1980, Senate Debate on House Bill No. 3487, at 86-87.

The General Assembly again amended section 10 through Public Act 89-356, effective August 17, 1995, which, among other things, increased the amount that the Commission could retain from \$100,000 to \$350,000. Notwithstanding these amendments after opinion No. S-1356, the fundamental purpose of section 10 as described by Attorney General Scott—restricting the Commission's authority to retain and accumulate funds—has not changed.⁶

Audit Findings

As noted above, the Commission received audit findings under audits conducted by the Auditor General for the years ending June 30, 2005,⁷ June 30, 2006,⁸ and June 30, 2007,⁹

⁶Indeed, the General Assembly has consistently restricted the Commission's authority to retain funds from the sale or lease of property since it added section 10 to the Act in 1947. Section 10 originally authorized the Commission to use all monies received as rentals for operation, maintenance, and improvement of property acquired under the Act, but required all amounts exceeding \$100,000 and not expended to be remitted to the State Treasury. 1947 Ill. Laws 1191, 1196-97. The legislature later amended section 10 to allow the Commission to use money received from the sale or lease of property to satisfy the obligation of any revenue bond, but to reduce the amount that the Commission could retain to \$25,000. 1953 Ill. Laws 1019, 1023. In 1961, the legislature lowered the amount the Commission was authorized to retain to \$10,000. 1961 Ill. Laws 493, 494.

⁷See Auditor General, Illinois Medical District Commission Financial Audit and Compliance Examination For the Year Ended June 30, 2005, Finding 05-3, pages 15-16.

⁸See Auditor General, Illinois Medical District Commission Financial Audit and Compliance Examination For the Year Ended June 30, 2006, Finding 06-2, pages 13-14.

⁹See Auditor General, Illinois Medical District Commission Financial Audit and Compliance Examination For the Year Ended June 30, 2007, Finding 07-8, pages 33-34.

relating to the failure to remit unexpended proceeds from the sale of Commission property to the State Treasury.¹⁰ The Auditor General recommended that the Commission remit the excess monies to the State Treasury.

In responding to the initial audit finding, the Commission disagreed, relying on a written opinion it received from a private attorney.¹¹ The Commission contended that because it had "committed and obligated" the funds, they were "expended" and therefore fell outside the scope of section 10. Specifically, the Commission argued that the proceeds of the sale of District property to the Federal government were "committed and obligated" by the Commission's

¹⁰See Auditor General, Illinois Medical District Commission Financial Audit and Compliance Examination For the Year Ended June 30, 2007, Finding 07-8, page 33:

During fiscal year 2004, the Commission sold real property held by the Commission to the Federal [government]. The proceeds from the sale totaled \$10,688,767. A portion of those proceeds were expended for authorized purposes in fiscal year 2004 and 2005. As of June 30, 2005, an estimated \$8,152,049 of those proceeds had not been expended or obligated to liquidate an enforceable legal obligation existing as of June 30, 2005. As of June 30, 2006, the unexpended portion of these proceeds was \$7,877,969 and the Commission had not yet remitted any of these excess funds to the State Treasury for deposit into the Income Fund as required by statute. As of June 30, 2007, funds in the amount of \$4,000,000 were pledged as collateral for purposes of the issuance of the \$40 Million Bond Offering in January of 2006. In addition, pursuant to a Commission Resolution dated May 23, 2006, the remainder of the funds were provided as collateral for a \$4,000,000 line of credit with a bank.

¹¹See Letter from Richard F. Friedman, Neal & Leroy, L.L.C., to Samuel W. Pruett, Executive Director, Illinois Medical District (February 28, 2005).

adoption of the June 15, 2004, resolution, which purports to allocate the remaining funds for specified uses.¹²

In your letter, you assert that the sale proceeds have been completely "expended" since the initial audit finding based on two Commission decisions. First, the Commission entered into a January 31, 2006, intergovernmental agreement with the Governor's Office of Management and Budget to contribute \$4,000,000 towards a portion of the costs related to acquiring, constructing, renovating, installing, and equipping certain facilities in the District which are or will be owned and operated by the Commission in the Chicago Technology Park and District Development Area in connection with the issuance of revenue bonds by the Illinois Finance Authority for the Commission to finance that project.¹³ Second, the Commission authorized, by resolution dated May 23, 2006, the use of \$4,000,000 as security for a line of

¹²See Illinois Medical District Commission, Commitment of Funding Resolution (June 15, 2004). Under the Resolution, the Commission indicates its desire to "commit and obligate the unexpended" funds received from the conveyance of its property to the Federal government. The funds were committed to be used for the following purposes:

- 1) Provision of matching funds under Program for the Planning, Development and Construction of the Technology Commercialization Center;
- 2) Capital Improvements to Commission Owned Properties and Buildings in the Chicago Technology Park and District Development Area;
- 3) Utility Relocations and Improvements for District Development Area; and
- 4) Bring current all loan, financing and other monetary obligations of the Illinois Medical District Commission.

¹³The letter further states that it was a condition precedent to the State's issuance of its moral obligation with respect to Series 2006 Bonds that the Commission contractually commit to contribute \$4,000,000 to that project, and that the project relates directly to the purposes expressed in the Commission's June 15, 2004, resolution. This opinion does not address the appropriateness of an intergovernmental agreement for these purposes.

credit that was established on January 18, 2005, to allow the Commission to acquire properties within the District Development Area that had been the subject of eminent domain actions filed prior to June 30, 2004.¹⁴

The Auditor General, however, maintains that the Commission must remit all funds in excess of \$350,000 to the State Treasury within the time frame set forth in section 10.¹⁵

ANALYSIS

The Commission is a "body politic and corporate" (70 ILCS 915/2(a) (West 2006)) and, as such, has the status of a public corporation. 1952 Ill. Att'y Gen. Op. 220, 227; 1954 Ill. Att'y Gen. Op. 47, 50; 1960 Ill. Att'y Gen. Op. 110, 111. Under well-established Illinois law, public corporations possess only those powers which have been expressly granted to them by the constitution or by statute, together with those powers arising by necessary implication therefrom. *Latham v. Board of Education of the City of Chicago*, 31 Ill. 2d 178, 186-87 (1964); *People ex rel. Board of Trustees of University of Illinois v. Barrett*, 382 Ill. 321, 340-45 (1943); *Evans v. Benjamin School District No. 25*, 134 Ill. App. 3d 875, 880 (1985).

¹⁴The resolution providing security for the expanded line of credit was dated after the initial audit finding was released, and purports to allow the Commission to finance property acquisitions despite the absence of capital funding from the General Assembly. The resolution states that the Commission will pay off the expanded line of credit upon the receipt of capital funding from the State. Further, although the intergovernmental agreement was dated prior to the release of the initial audit finding by the Auditor General, several items of correspondence reveal that the Commission was aware of concerns surrounding the retention of funds prior to finalizing the intergovernmental agreement. See Memorandum from Becky Patton, Chief Legal Counsel for the Auditor General, to Kevin Carhill (July 8, 2005); Memorandum from Richard F. Friedman, Neal & Leroy, L.L.C., to Samuel W. Pruett, Executive Director, Illinois Medical District Commission, and Kenneth E. Scheiwe, Legal Counsel, Illinois Medical District Commission (September 13, 2005); Memorandum from Becky Patton, Chief Legal Counsel for the Auditor General, to Kevin Carhill (September 28, 2005).

¹⁵See Auditor General, Illinois Medical District Commission Financial Audit and Compliance Examination For the Year Ended June 30, 2007, Finding 07-8, page 34.

The Commission argues that because it had "committed and obligated" the proceeds from the sale of the subject property prior to June 30, 2004, the proceeds had been "expended" for purposes of section 10 of the Act and were not available for remittance to the State Treasury. In construing a statute, such as section 10 of the Act, the primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). If the statutory language is clear, its plain and ordinary meaning must be given effect without resort to other aids of statutory construction. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 235 (2007).

The term "expended" is not defined in the Act or any other Illinois statute, nor have Illinois courts construed its meaning. Undefined statutory terms must be given their ordinary and popularly understood meaning. *Wauconda Fire Protection District v. Stonewall Orchards, LLP*, 214 Ill. 2d 417, 430 (2005). Other state courts have determined that "expended" means: "to pay out, or lay out, use up, disburse" (*Adams v. Prather*, 176 Cal. 33, 42, 167 P. 534, 538 (1917)); "to pay out, lay out, use up" (*In re Holmes' Estate*, 233 Wis. 274, 280, 289 N.W. 638, 641 (1940)); or "paid out; disbursed" (*School Dist. No. 24 of Marion County v. Smith County School Superintendent*, 82 Or. 443, 447-48, 161 P. 706, 708 (1917)). Additionally, the term "expend" means "to pay out or distribute: SPEND[.]" Webster's Third New International Dictionary 799 (1993). As commonly understood, therefore, the phrase "in excess of such amount *expended*" (emphasis added) refers to funds that were actually paid out or spent, not merely committed to some future expenditure.

This construction of "expended" is further supported by the legislature's use of the term "obligated" in section 10 when referring to revenue bond obligations. When the General Assembly uses certain words in one instance and different words in another, it intends different results. *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 362 Ill. App. 3d 652, 661 (2005), quoting *Divane v. Smith*, 332 Ill. App. 3d 548, 553 (2002); *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 256 (2004). Here, section 10 contains an exception from its requirements for property sales proceeds "*necessary to satisfy the obligation of any revenue bond[.]*" (Emphasis added.) Because the General Assembly used a form of the word "obligate" in the same sentence that it used the term "expended," it must be assumed that the legislature intended those terms to have different meanings. Therefore, it is my opinion that the sale proceeds that the Commission obligated for future spending but did not actually pay out or spend prior to September 30 were not "expended" under the plain language of section 10.

The Commission argues that the analysis should turn not on section 10's plain language, but on the General Assembly's purpose behind enacting the provision, which was to prevent the Commission from acquiring a large reserve of funds. Even following this approach, however, the Commission's argument fails. Permitting the Commission to hold funds to expend at a time and in circumstances other than those specifically set out in section 10 would frustrate the General Assembly's intent to reserve for itself the discretion to determine whether to appropriate those funds for additional acquisitions or to put them to other uses. *See* 1978 Ill. Att'y Gen. Op. 106, 108.

Additionally, I note that your letter does not identify the statutory provision from which the Commission claims to derive authority to retain monies received from the sale of property to provide security for a line of credit to enable the Commission to proceed with voluntary property acquisition in the absence of capital funding appropriations. Typically, when the General Assembly authorizes bodies politic and corporate to enter into lines of credit, it does so through express statutory provisions.¹⁶ Here, section 5 of the Act (70 ILCS 915/5 (West 2006)) authorizes the Commission to borrow funds from any public or private agency, department, corporation, or person to finance the acquisition of land or the acquisition or construction of any building, or to operate the District. This section also allows the Commission to issue revenue bonds as security for such borrowed funds. Under section 2, the Commission may apply for and accept grants, loans, or appropriations from the State of Illinois, the Federal government, any State or Federal agency, or any person or entity. 70 ILCS 915/2 (West 2006). Nothing in the language of the Act, however, expressly authorizes the Commission to establish lines of credit. Had the General Assembly intended to provide the Commission with such authority, it would have done so expressly.

CONCLUSION

As used in section 10 of the Illinois Medical District Act, the term "expended" means paid out or actually spent. The Commission's contention that funds that have been

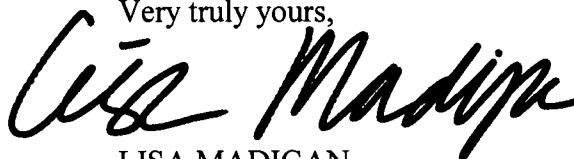
¹⁶See, e.g., 70 ILCS 910/21.3 (West 2007 Supp.) (hospital districts); 110 ILCS 805/7-1.1 (West 2006) (public community college boards); 105 ILCS 5/17-17 (West 2006) (school boards of school districts with population of 500,000 or fewer inhabitants); 70 ILCS 3205/13 (West 2006) (Illinois Sports Facilities Authority); 70 ILCS 3210/100 (West 2006) (Downstate Illinois Sports Facilities Authority).

Mr. Samuel W. Pruett - 14

"committed and obligated" for future expenditure have been "expended" prior to June 30 for purposes of section 10 is incorrect. Under the plain language of section 10 of the Act, it is my opinion that by July 10 of each year, the Commission must transmit to the State Treasury all proceeds from the sale of property on hand as of June 30, in excess of \$350,000, that (1) were not paid out, (2) are not necessary to satisfy revenue bond obligations, or (3) are not required to pay enforceable contractual obligations existing as of June 30 and to be paid no later than September 30 of that year. If the Commission retains funds to pay existing contractual obligations but does not actually pay those funds out by September 30, they must be transmitted to the State Treasury for deposit no later than October 10.

If the Commission is interested in expanding its authority to lawfully retain monies in excess of the current statutory limitations, then it must address this issue with the General Assembly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" and last name "Madigan" clearly distinguishable.

LISA MADIGAN
ATTORNEY GENERAL