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SPRINGFIELD

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FILE NO. 83-010

STATE MATTERS:
The Department of Law Enforcement
Must Pursue All Reasonable Administrative
Means in the Collection of Claims or
Accounts Receivable of $500 or Less

James B. Zagel, Director
Illinois Department of Law Enforcement
103 Armory Building
Springfield, Illinois 62706

Dear Director Zagel:

I have your letter wherein you request advice on the following matters as they relate to Public Act 82-181:

(1) What are the proper procedures for an agency to follow when collecting claims under $500 and will the Attorney General provide any necessary legal assistance?

(2) What constitutes a fixed and enforceable claim which is eligible for removal under section 2 of the Act; what is the proper disposition or removal of a claim which does not meet this criteria?

> (3) Do the provisions of the Workers' Compensation Act allowing modification of agreements or awards in chapter 48, section 138.19(h), affect either the classification of a claim as fixed or enforceable or the 10-year holding period?
>
> (4) Does a statute of limitations barring civil action affect the enforceability of claims under this Act and does this impact the 10-year holding requirement in section 2?

I will respond with a general discussion of the issues you have raised. The conclusions reached in this opinion, however, may be subject to modification as specific factual situations arise.

As you are aware, Public Act 82-181 (effective August 13, 1981) amended section 2 of "AN ACT in relation to uncollected claims and accounts receivable of State agencies" [the Act] (Ill. Rev. Stat. 1981, ch. 15, par. 102) to provide certain procedures to be followed by State agencies with respect to uncollected claims or accounts receivable. With respect to those claims or accounts of greater than $500, the procedures existing prior to Public Act 82-181 for the collection of and the transfer of uncollectible items apply. Specifically, subsection 2(b) of the Act (Ill. Rev. Stat. 1981, ch. 15, par. 102(b)) provides that:

> "When any State agency is unable to collect any claim or account receivable greater than $500 due it after having pursued the procedure prescribed by law for the collection thereof or, if no such procedure is so prescribed, after having undertaken, through the Attorney General or otherwise, to collect the claim or account by all reasonable means, the State agency may request the Attorney General to approve the transfer of such uncollectible item from the records of such

> State agency to the records of the State Comptroller. The Attorney General shall approve such transfer if he is satisfied that the possibility of collecting the claim or account receivable by all reasonable means is remote or nonexistent. Upon the Attorney General's approval of the request, the State agency shall certify the uncollectible item to the Comptroller and remove such item from its records."

With respect to those claims or accounts of $500 or less, Public Act 82-181 added the present subsection 2(a) of the Act (Ill. Rev. Stat. 1981, ch. 15, par. 102(a)), which established new procedures as follows:

> "(a) When any State agency is unable to collect any claim or account receivable of $500 or less due it after having pursued the procedure prescribed by law for the collection thereof or, if no procedure is so prescribed, after having attempted to collect the claim or account by all reasonable means, the State agency may, not less than 10 years after the debt has become fixed and enforceable, write off the debt from its records. Within 60 days after taking such action, the State agency shall give written notice thereof to the Auditor General."

As an initial matter, the Illinois Department of Law Enforcement [the Department] is a "State agency" within the meaning of the Act. (Ill. Rev. Stat. 1981, ch. 15, par. 101; also, see Ill. Rev. Stat. 1981, ch. 15, pars. 207, 301-7.)

Subsection 2(a) of the Act requires that a State agency pursue the procedure prescribed by law for the collection of any claim or account receivable of $500 or less. If no such procedure is prescribed, the State agency must attempt collection by all reasonable means. There is no general law

prescribing collection procedures to be utilized by State agencies. Additionally, there are no specific procedures prescribed by law for the collection of any claim or account receivable due the Department. Therefore, the Department is required to attempt to collect the claim or account by "all reasonable means".

The principle is well established that an agency of the State created by legislative act has no power or authority beyond that expressly conferred upon it by statute. (Department of Public Works and Buildings v. Schlich (1935), 359 Ill. 337, 345-346; Department of Public Works and Buildings v. Ryan (1934), 357 Ill. 150, 155; People v. Righeimer (1921), 298 Ill. 611, 618.) An express grant of power or duty by the General Assembly to an administrative body or officer to do a particular thing includes the power to do all that is reasonably necessary to execute that power or duty. (Meana v. Morrison (1975), 28 Ill. App. 3d 849, 854; Stanley Mfg. v. Environmental Protection Agency (1972), 8 Ill. App. 3d 1018, 1023.) Subsection 2(a) of the Act does not specify what constitutes a "reasonable" means for collection. However, because the Department is an agency of State government, the phrase "all reasonable means" is necessarily limited by the statutory authority granted the Department to act.

The Department has no express authority to pursue any type of legal action. The authority to pursue collection of a

claim through legal proceedings is vested in the Attorney General, who, as the legal officer for the State, must institute and prosecute all actions and proceedings in favor of or for the use of the State. (Ill. Rev. Stat. 1981, ch. 14, par. 4.) The mandate of subsection 2(a) of the Act to pursue "all reasonable means" of collection cannot be read as an implied statutory grant of power to the Department to file civil actions or pursue legal remedies. Although the statute does not preclude the Department from turning over accounts of any amount to the Attorney General for collection, the Attorney General may not approve those accounts of $500 or less for transfer to the Comptroller. To do so would defeat the apparent purpose of subsection 2(a), which is to allow for the disposition of certain de minimus claims by the State agencies themselves. Additionally, the Attorney General may refuse to pursue collection of a claim if the amount due is too small to justify the initiation of legal proceedings.

The Department is required to pursue "all reasonable means" of collection. The Act must be construed as authorizing an agency to do what is administratively reasonable in terms of collecting claims or accounts due. Procedures may vary with the type of debt due and the measures available to an agency. However, the following could be included as reasonable under most circumstances: appropriate demand and follow-up demands

for payment; collection by offset where feasible in accordance with section 10.05 of the State Comptroller Act (Ill. Rev. Stat. 1981, ch. 15, par. 210.05); where feasible, personal interviews with the debtor for the purposes of explaining amounts owed, collection of information necessary to collect the debt and establishing installment payment plans where claims cannot be collected in one lump sum; suspension or revocation of licenses or other privileges, where legally permissible, for any inexcusable, prolonged, or repeated failure to pay, assuming that the debtor has been advised in advance of such consequences. Additionally, in some cases, the pursuit of "all reasonable means" of collection would necessarily require that the account be turned over to the Attorney General for collection. The above suggestions are not intended to preclude the utilization of any other reasonable administrative remedy which may be available to the Department.

Secondly, you have inquired as to what constitutes a "fixed and enforceable" debt within the meaning of subsection 2(a) of the Act. The term "fixed and enforceable" is not defined by the Act. Unless words are specifically defined by the General Assembly, courts will apply to words appearing in legislative enactments the commonly accepted use or the common dictionary meaning. (Bowes v. City of Chicago (1954), 3 Ill. 2d 175.) The word "fixed" is defined in pertinent part to mean:

> " * * * c (1) : not subject to change or fluctuation : absolute, settled, definite * * * " (Webster's Third New International Dictionary 861.)

The word "enforceable" is defined to mean:

> " * * * capable of being enforced * * * " (Webster's Third New International Dictionary 751.)

The word "enforce" is defined in pertinent part to mean:

> " * * * 5 : Constrain, Compel (obedience from children) 6 obs : to make or obtain by force (a passage) 7 : to put in force : cause to take effect : give effect to esp. with vigor (laws) * * * " (Webster's Third New International Dictionary 751.)

Consequently, what is a fixed and enforceable debt must be considered as a debt which is definitely settled or determined and capable of being given effect through legal or administrative recourse. Such a debt would appear to be analogous to a "liquidated" debt. A debt has been characterized as "liquidated" by the Illinois courts when "it is certain what is, and how much is due * * *; for, although it may appear that something is due, if it does not also appear how much is due, the debt is not liquidated. An unliquidated debt is one which one of the parties cannot alone render certain." Clark v. Dutton (1873), 69 Ill. 521, 523.

In the second part of your second question, you have asked what is the proper disposition of a claim which is not "fixed and enforceable". In accordance with subsection 2(a) of the Act, the Department, after having attempted to collect the

claim or account by all reasonable means "may, not less than 10 years after the debt became fixed and enforceable, write off the debt from its records". The Act does not, by its own terms, address the disposition of debts which are not fixed and enforceable. The Department is not expressly granted the power to write off debts which are not "fixed and enforceable". Moreover, the necessary implication of subsection 2(a) is that claims which are not "fixed and enforceable" may not be written off and must remain on the records of the Department until they have attained that status and remained at such status for ten years.

Thirdly, you have inquired how the provisions of subsection 19(h) of the Workers' Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 138.19), which provide for the modification of agreements or awards to be made in installments, affect both the classification of a claim as fixed or enforceable and the 10-year holding period under subsection 2(a) of the Act. Subsection 19(h) of the Workers' Compensation Act provides in pertinent part that:

> "(h) An agreement or award under this Act providing for compensation in installments, may at any time within 18 months after such agreement or award be reviewed by the Commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended.
>
> However, as to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such

> agreement or award may at any time within 30 months after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended.
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> On such review compensation payments may be re-established, increased, diminished or ended.
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> * * *
>
> When compensation which is payable in accordance with an award or settlement contract approved by the Commission, is ordered paid in a lump sum by the Commission, no review shall be had as in this paragraph mentioned."

In accordance with subsection 5(b) of the Workers' Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 138.5), the Department, as employer, may be due monies for compensation paid, from an employee who has recovered from a third party or from a third-party tort feasor based on statutory subrogation. Subsection 5(b) of the Workers' Compensation Act provides that:

> (b) "Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act.

* * *

If the injured employee or his personal representative agrees to receive compensation from the employer or accept from the employer any payment on account of such compensation, or to institute proceedings to recover the same, the employer may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party.

In such actions brought by the employee or his personal representative, he shall forthwith notify his employer by personal service or registered mail, of such fact and of the name of the court in which the suit is brought, filing proof thereof in the action. The employer may, at any time thereafter join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. No release or settlement of claim for damages by reason of such injury or death, and no satisfaction of judgment in such proceedings shall be valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by Court order.

In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred, the employer may in his own name or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representatives all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability." (Emphasis added.)

The time at which a claim would become fixed and enforceable could vary from case to case depending on the specific circumstances. As a general proposition it appears that the amount due the Department would be fixed and enforceable from the time that final settlement is reached or judgment obtained by the employee against the third party or from the time that judgment is obtained directly against the third party pursuant to third party subrogation. At that point, the 10-year holding period would begin to run.

Subsection 19(h) of the Workers' Compensation Act provides that an agreement or award for workers' compensation to be paid in installments may be subsequently reviewed and modified. Such agreements or awards are nevertheless fixed and enforceable for the purposes of the Act from the time they are initially made. Apart from the possibility that the Commission may, at a future time, review and modify an agreement or award, the sum is definitely settled or determined and capable of being enforced. Consequently, subsection 138.19(h) apparently does not affect the classification of a claim as fixed and enforceable.

Finally, you have inquired whether a statute of limitations barring civil action would affect the enforceability of claims under the Act and, if so, whether such a limitation affects the 10-year holding requirement in

section 2. For the reasons discussed below, it is my opinion that a statute of limitations barring civil action would not affect the enforceability of claims under the Act or the 10-year holding requirement of subsection 2(a).

Generally, the running of a statute of limitations bars an action to recover a debt but does not extinguish the debt itself. (Fleming v. Yeazell (1942), 379 Ill. 343, 345; Burnett v. West (1941), 375 Ill. 402, 404.) Moreover, the rule is well established that statutes of limitations, unless they expressly so provide, do not run against the State when the State is collecting obligations owed to it. (In re Bird's Estate (1951), 410 Ill. 390, 394; Clare v. Bell (1941), 378 Ill. 128, 130-131.)

In La Pine Scientific Co. v. Lenckos (1981), 95 Ill. App. 3d 955, the appellate court considered the question of whether section 10.05 of the State Comptroller Act (Ill. Rev. Stat. 1977, ch. 15, par. 210.05), which provides the State with the statutory right of set-off, could be used to set off petitioner's overpayment of 1977 income tax, and payments due to it for merchandise sold to various agencies of the State of Illinois, against two unpaid final assessments under the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1977, ch. 120, pars. 440 through 453), for which an action was barred by the statute of limitations. The court in La Pine considered the

issue of whether the unpaid tax assessments continued to be claims in favor of the State which were "then due and payable" as they were required to be by the set-off provision. The trial court specifically found that the assessments had been extinguished as debts due and payable to the State, and that section 10.05 was inapplicable to them because their collection had been barred by the statute of limitations prior to the enactment of the statutory set-off provision. On appeal the State asserted that the assessments were not extinguished by the running of the statute of limitations but remained as debts due to the State. The appellate court concluded that the set-off did not impermissibly interfere with plaintiff's limitation defense where that defense arose after passage of the set-off, and the bringing of a lawsuit which the statute of limitations bars was not necessary for recovery by the State. In making that determination, the appellate court stated, on pages 958-959, that:

" * * *

> Statutes of limitation affect the remedy by limiting the period within which legal action may be brought or remedies may be enforced; they bar the right to sue for recovery but do not extinguish the debt which remains as before. (Fleming v. Yeazel (1942), 379 Ill. 343, 345-46, 40 N.E.2d 507, 508; Cook v. Britt (1972), 8 Ill. App. 3d 674, 676, 290 N.E.2d 908, 909.) It is clear that the assessments in question remain as debts owing to the State but are not enforceable by means of a lawsuit brought by the State. They had not been 'extinguished' as the trial court found but were merely unenforceable in a court

> of law. As such, the assessments are still claims 'then due and payable' for purposes of section 10.05 and were properly set off against plaintiff's tax overpayment.
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> * * *
>
> (Emphasis added.)

Based on the holding in La Pine, it appears that a statute of limitations barring civil action by the State may not render a debt unenforceable within the meaning of subsection 2(a) of the Act. Although an applicable statute of limitations may bar civil action by the State, it appears that the Department may continue to pursue collection of a claim or account due by all reasonable means.

Finally, with regard to the 10-year holding period, the mandate of subsection 2(a) of the Act is clear. The Department can write off a debt of $500 or less from its records only after the expiration of the 10-year period and it may not request the Attorney General's approval for the transfer of such debts to the Comptroller. Additionally, for the reasons stated above, the running of any applicable statute of limitations in no way impacts on the 10-year holding requirement of subsection 2(a) of the Act.

Very truly yours,

ATTORNEY GENERAL