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STATE OF ILLINOIS

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FILE NO. 92-022

STATE MATTERS:
Loan Guarantees of Illinois
Farm Development Authority

Mr. David L. Wirth
Executive Director
Illinois Farm Development Authority
427 East Monroe, Suite 201
Springfield, Illinois 62701

Dear Mr. Wirth:

I have your letter wherein you inquire whether loans guaranteed by the Illinois Farm Development Authority (IFDA) are: (1) unconditionally guaranteed as to principal and accrued interest and are backed by the full faith and credit of the State of Illinois; and (2) whether such guarantees extend to holders in due course of the loans. For the reasons hereinafter stated, it is my opinion that loan guarantees issued by IFDA are unconditional and are backed by the full faith and credit of the State of Illinois up to the limits imposed by statute, and that such guarantees do inure to holders in due course of such loans.

Section 12.1 of the Illinois Farm Development Act (hereinafter "the Act") (Ill. Rev. Stat. 1991, ch. 5, par. 1212.1) authorizes IFDA to issue guarantees to lenders who make loans to farmers for the purpose of restructuring the farmers' existing debts. IFDA's guarantees may not exceed \$300,000 per farmer and apply to no more than 85% of the outstanding principal balance plus accrued interest on each loan. The State's liability is limited to \$45 million for the program, and guarantees may not be issued in an aggregate principal amount exceeding \$160 million. (Ill. Rev. Stat. 1991, ch. 5, pars. 1211, 1212.1.) You have stated that net losses in the program to date total less than \$2 million.

The information which you have provided indicates that a secondary market is developing for the guaranteed portions of these loans. Dealers in that market have requested assurances that IFDA's guarantees are unconditional and are backed by the full faith and credit of the State when held by a holder in due course.

An unconditional guarantee is one which imposes no duty upon the creditor or holder of the obligation to attempt collection from the principal debtor before looking to the guarantor. Lawndale Steel Co. v. Appel (1981), 98 Ill. App. 3d 167, 170; United States v. Willis (6th Cir. 1979), 593 F.2d 247, 254.

Subsection 12.1(c) of the Act (Ill. Rev. Stat. 1991, ch. 5, par. 1212.1(c)) provides, in pertinent part:

" * * *

In the event of default by the farmer, the lender shall be entitled and the Authority shall direct payment on the State Guarantee after 90 days of delinquency. All payments by the Authority shall be made from the Illinois Agricultural Loan Guarantee Fund to satisfy claims against the State Guarantee. The Illinois Agricultural Loan Guarantee Fund shall guarantee receipt of payment of the 85 percent of the principal and interest owed on the State Guarantee Loan by the farmer to the guarantee holder.

* * * "

(Emphasis added.)

In the event of default, there is no requirement that the guarantee holder attempt collection from the farmer. Rather, the holder of the guarantee is entitled to payment by IFDA of the guaranteed portion of the loan after 90 days of delinquency. The subsequent paragraph of subsection 12.1(c) requires the lender to proceed with disposition of collateral within 14 months of delinquency. This requirement, however, is not a condition precedent to the payment of the guaranteed amount to the holder of the guarantee. Therefore, it is my opinion that these guarantees are unconditional.

Moreover, the payment of the guarantee does inure to the holder thereof. The emphasized language quoted above provides for payment to the guarantee holder. The Act contemplates that the holder may be an entity other than the lender, since the last sentence of section 12.1 expressly provides for

the selling of the guaranteed loan in a secondary market. Consequently, it is my opinion that the unconditional guarantee inures to the benefit of the holder in due course of such a loan or a portion thereof.

Lastly, it is my opinion that the guarantees in question are backed by the full faith and credit of the State up to the \$45,000,000 loss limit set forth in the Act. A pledge of the full faith and credit of the State is an undertaking by the State to be obligated irrevocably to use its taxing powers, or any revenues available to it for general governmental purposes, for the full and prompt payment of the amount due. Such an undertaking may be distinguished from an obligation payable solely from a single, designated revenue source, such as income producing property, which is not considered a debt of the State. People v. Barrett (1940), 373 Ill. 393, 400-01; Sacramento Municipal Utility District v. Spink (Cal. App. 1956), 303 P.2d 46, 54.

Subsection 12.1(c) of the Act provides for the creation of the Illinois Agricultural Loan Guarantee Fund, from which payments on guarantees are to be made. The second paragraph of the subsection provides:

" * * *

The Authority is authorized to transfer no more than \$45,000,000 to the Fund during the duration of the State Guarantee program to secure State Guarantees issued under this Section and the State shall not be liable for

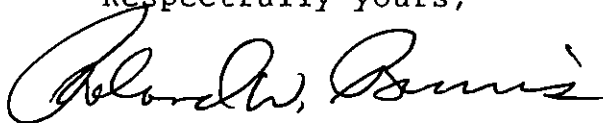
more than \$45,000,000 to secure State Guarantees issued under this Section. If for any reason the General Assembly fails to make an appropriation sufficient to meet these obligations, this Act shall constitute an irrevocable and continuing appropriation of an amount necessary to secure guarantees as defaults occur up to an amount equal to the difference between the \$45,000,000 obligation and all amounts previously transferred to the Illinois Agricultural Loan Guarantee Fund, and the irrevocable and continuing authority for and direction to the Governor, State Treasurer and the Comptroller to make the necessary transfers to the Illinois Agricultural Loan Guarantee Fund, as directed by the Governor, out of the General Revenue Fund.

* * *

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This provision makes available, from the general revenues of the State, up to \$45,000,000 to back the guarantees in question. This amount is not dependent upon income from a specific source, and is a continuing appropriation, which requires no further action by the General Assembly. Continuing appropriation provisions for the repayment of debt have been held to be valid. (People ex rel. Ogilvie v. Lewis (1971), 49 Ill. 2d 476, 489-90.) Therefore, it is my opinion that the State has pledged its full faith and credit to back the IFDA guarantees up to the \$45,000,000 loss limit set forth in the Act.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL