



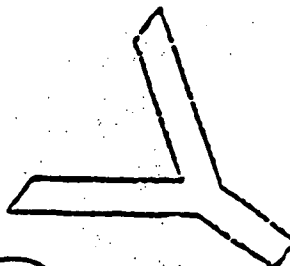
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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

June 24, 1981

FILE NO. 81-020

**APPROPRIATIONS:  
Expenditures During  
Lapse Periods**



Honorable James R. Thompson  
Governor of the State of Illinois  
Springfield, Illinois 62706

Dear Governor Thompson:

I have your letter in which you ask whether a loan commitment issued by the Director of the Department of Commerce and Community Affairs pursuant to section 6 of the Corporate Loan Act (Ill. Rev. Stat. 1980 Supp., ch. 32, par. 1406) constitutes an outstanding liability for purposes of the application of the appropriation lapse provisions contained in section 25 of "AN ACT relating to internal auditing in State government" [State Finance Act] (Ill. Rev. Stat. 1979, ch. 127, par. 161). For the reasons hereinafter stated, it is my opinion that the issuance of a loan commitment pursuant to section 6 of the Corporate Loan Act would not constitute an outstanding liability, unless the Governor and the Director of the Bureau of the Budget approve

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the making of the loan pursuant to sections 4 and 5 of the Act (Ill. Rev. Stat. 1980 Supp., ch. 32, pars. 1404, 1405) prior to the end of the fiscal year.

Section 25 of the State Finance Act provides, in pertinent part:

"All appropriations shall be available for expenditure for the fiscal year or for a lesser period if the Act making that appropriation so specifies. \* \* \*

Outstanding liabilities as of June 30, payable from appropriations which have otherwise expired, may be paid out of the expiring appropriations during the three-month period ending at the close of business on September 30.

\* \* \*

The General Assembly, by Public Act 81-1560, appropriated the sum of \$20,000,000 from the Corporate Loan Fund to the Department of Commerce and Community Affairs for the purpose of making loans pursuant to the provisions of the Corporate Loan Act during fiscal year 1981. The appropriation will lapse on June 30, 1981, and payment from it will be prohibited except to satisfy outstanding liabilities as of that date, for which sums may be paid out until the termination of the three-month period following the end of the fiscal year. (Ill. Rev. Stat. 1979, ch. 127, par. 161.) West Side Organization Health Services v. Thompson (1980), 79 Ill. 2d 503, 505-06.

The term "outstanding liabilities" is not defined in the State Finance Act, nor has its meaning for purposes of section 25 of that Act been addressed by the courts. However,

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it is recognized that words employed in a statute should be given their ordinary or commonly accepted meaning, unless to do so would defeat the legislative intent. (Droste v. Kerner (1966), 34 Ill. 2d 495, 503.) The term "outstanding" has been defined as "[r]emaining undischarged; unpaid; uncollected; as an outstanding debt. \* \* \*" (Black's Law Dictionary 1256 (4th rev. ed. 1968).) The term "liabilities" has been defined to mean "pecuniary obligations" (Webster's Third New International Dictionary 1302 (1966)), or any obligation one is bound in law to perform. (Murphy v. Chicago League Ball Club (1921), 221 Ill. App. 120, 126-27.) Therefore, the term "outstanding liabilities" has a commonly understood meaning, which includes undischarged financial obligations which are required by law to be performed. Using this definition in the context of the question you ask, it is necessary to determine whether the issuance of a loan commitment by the Director of the Department of Commerce and Community Affairs prior to June 30, 1981, is sufficient to create an obligation against the lapsing appropriation which the State is bound to perform.

The Corporate Loan Act (Ill. Rev. Stat. 1980 Supp., ch. 32, par. 1401 et seq.) provides for financial assistance to eligible corporations in the form of loans issued by the State. Sections 4 and 5 of the Corporate Loan Act (Ill. Rev. Stat. 1980 Supp., ch. 32, pars. 1404, 1405) set forth specific

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substantive conditions which must be met by a corporation in order to be eligible to borrow funds from the State. In addition to specifying conditions for eligibility for the issuance of loans pursuant to the provisions of the Corporate Loan Act, section 4 provides in pertinent part:

"Subject to the provisions of this Act, the Director of the Department of Commerce and Community Affairs, with the approval of the Governor and the Director of the Bureau of the Budget, may, from appropriations made for such purpose from the Corporate Loan Fund, make loans on behalf of the State \* \* \* .

\* \* \*

(Emphasis added.)

Section 5 of the Corporate Loan Act contains the following language pertaining to the issuance of loans:

"A loan may be issued under this Act only pursuant to Section 4 and upon the approval of the Governor and the Director of the Bureau of the Budget. \* \* \*

\* \* \*

(Emphasis added.)

The Director of the Department of Commerce and Community Affairs is delegated the primary responsibility for the administration of the Corporate Loan Act. Among the duties of the Director is the duty to determine whether a corporation seeking to borrow funds is eligible under the conditions specified in sections 4 and 5 of the Corporate Loan Act. Section 6 of the Corporate Loan Act (Ill. Rev. Stat. 1980 Supp., ch. 32, par. 1406) provides in pertinent part:

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"Any determination by the Director that the conditions established by this Act have been met shall be conclusive, and such determination shall be evidenced by the issuance of the loan commitment for which such determination is required. The Director is authorized to determine the form in which any loan commitment made under this Act shall be issued. \* \* \*

\* \* \*

(Emphasis added.)

Section 8 of the Corporate Loan Act (Ill. Rev. Stat. 1930 Supp., ch. 32, par. 1408), pertaining to the form of loan commitments, provides in pertinent part:

\* \* \*

(b) Any commitment to issue loans entered into pursuant to this Act shall contain all the affirmative and negative covenants and conditions that the Director determines are appropriate to protect the interest of the State in maintaining the operations of said Corporation in Illinois as a Going Concern and in establishing and maintaining the security of the loan."

It is clear that the Director of the Department of Commerce and Community Affairs is required to evidence his determination that a corporation is eligible to borrow State funds by the issuance of a loan commitment, which contains all covenants and conditions the Director deems necessary to establish security for the loan. However, it is equally clear from the language of the Corporate Loan Act that the mere issuance of a loan commitment by the Director is ineffective to create an obligation which the State is bound to discharge.

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The intention of the General Assembly in enacting a statute is to be sought from the language employed therein, and where the language is clear and unambiguous, it must be given effect. (Certain Taxpayers v. Sheahan (1970), 45 Ill. 2d 75, 84; City of Decatur v. German (1924), 310 Ill. 591, 595.) Sections 4 and 5 of the Corporate Loan Act state clearly that a loan may be issued to an eligible corporation only upon the determination by the Director of the Department of Commerce and Community Affairs that the corporation is eligible under the conditions specified in the Act, and only " \* \* \* upon the approval of the Governor and the Director of the Bureau of the Budget. \* \* \* "

The term "approve" means more than the exercise of a mere ministerial function; it is generally recognized that where a statute requires the approval of an officer or body of officers to validate, consummate, or make effective the act of another, it is the intention of the General Assembly that such officer or officers are vested with the option and discretion to either approve or to disapprove the act. (Gustafson v. Wethersfield Township High School (1943), 319 Ill. App. 255, 259-60.) It is clear that the General Assembly contemplated the approval or disapproval of a loan commitment by the Governor and the Director of the Bureau of the Budget before the Director of the Department of Commerce and Community Affairs may issue a loan to an eligible corporation upon the terms of the loan commitment. Therefore, a loan commitment to which the Governor and the Director of the Bureau of the Budget have not given their

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approval is merely evidence of a corporation's eligibility to borrow, and the terms upon which the Director finds a loan can be issued. It is my opinion that such a loan commitment, without the approval of the Governor and the Director of the Bureau of the Budget, does not constitute an outstanding liability for purposes of section 25 of the State Finance Act.

However, if, prior to the close of the fiscal year, both the Governor and the Director of the Bureau of the Budget approve the issuance of a loan pursuant to the provisions of the Corporate Loan Act, it is my opinion that the approved loan commitment would constitute an outstanding liability which, if not discharged by June 30, may be satisfied from unexpended funds during the three-month period immediately following.

A loan of money is a contract whereby one party delivers a sum of money to another, which the other agrees to repay absolutely, together with such additional sums as may be agreed upon for its use. (In re Grand Union Co. (2d Cir. 1914), 219 F. 353, 356.) The approval of a loan commitment by the Governor and the Director of the Bureau of the Budget creates an obligation on the part of the State, as lender, to transfer such sums of money to the borrower as may be specified by the terms of the loan commitment. Being an obligation which the State is bound to perform by the acceptance of the terms

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of the loan commitment, the obligation to transfer the loan amount is properly considered an outstanding liability which is subject to discharge pursuant to the provisions of section 25 of the State Finance Act.

Very truly yours,

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