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SPRINGFIELD

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FILE NO. S-1041

**CEMETERIES:  
Funeral or Burial  
Funds Act**

Honorable George W. Lindberg  
Comptroller  
State of Illinois  
Springfield, Illinois 62706

Dear Mr. Lindberg

This replies to your letter in which you raise two questions concerning the Funeral or Burial Funds Act. (Ill. Rev. Stat. 1973, ch. 111 1/2, pars. 73.101 et seq.) You state that some licensees deposit pre-burial funds in trust accounts with financial institutions recognized by section 2 of the Act. (Ill. Rev. Stat. 1973, ch. 111 1/2, par. 73.102.) Pursuant to a trust agreement the funds are invested by the institution in securities rather than held in conventional

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savings accounts. Your first question is whether such investment practices are legally permissible.

Section 2 of the Act provides as follows:

"§ 2. All such trust funds shall be deposited in the name of the trustee, as trustee, within 30 days after receipt thereof, with either a bank or trust company authorized to do business in the State of Illinois, or a Federal Savings and Loan Association where investments are protected by the Federal Savings and Loan Insurance Corporation. The trustee at the time of making deposit shall furnish to the depository the name of each payor, and the amount of payment on each such account for which deposit is being so made."

While it may not be clear from the language of this section as it now reads, I am of the opinion that when the history of this section is considered that the investment practice outlined in your letter is legally permissible.

As enacted in 1955 (Laws of 1955, p. 2020) the first sentence of section 2 read as follows:

"§ 2. All such trust funds shall be deposited in the name of the trustee, as trustee, within 30 days after receipt thereof, with either a bank or trust company authorized to do business in the State of Illinois, and shall be held in trust, subject to the provisions of this Act. \* \* \*"

In 1961 my predecessor issued an opinion in which he advised, based on the language "and shall be held in trust", that the

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funds were to be held in trust by a bank or trust company, and that the bank or trust company was clearly a successor trustee. (1961 Ill. Att'y. Gen. Op. 154.) Thus, the practice about which you inquire had been the historical practice. Trustees have authority under section 5 of the Trust and Trustees Act to invest in securities. Ill. Rev. Stat. 1973, ch. 148, par. 105.

In 1965 the first sentence was amended to read as it presently does. (Laws of 1965, p. 1284.) The amendment permitted funds to be deposited with certain savings and loan associations. Since savings and loan associations are not authorized to hold funds in trust, the words in the statute "and shall be held in trust" were eliminated. I do not think that the elimination of these words was intended to discontinue the investment practice. This is supported by the fact that the language permitting a deposit with a trust company, was not eliminated. Deposits in a conventional savings account are not possible with a trust company.

Your second question is whether individual trust funds may be commingled and invested in time savings accounts and certificates of deposit. Under the common law a trustee was not permitted to maintain a single bank account for more than

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one trust. (Bogert, Trusts and Trustees, sec. 596 (2d ed. 1960).) Bogert also recognized that there has been a tendency to permit mingling of two or more trust funds in an investment, provided the trustee keeps accurate books with regard to the share of each trust, and each cestui is given notice of his exact interest. I am of the opinion that the second sentence in section 2 of the Act, which requires that the trustee inform the depository of the name and amount of each payor, was for the purpose of keeping accurate records and permitting the commingling of the trust funds in one account. Furthermore, under the Trust and Trustees Act (Ill. Rev. Stat. 1973, ch. 148, pars. 101 et seq.) commingling is permitted by certain trustees.

Very truly yours,

A T T O R N E Y   G E N E R A L