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STATE OF ILLINOIS

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FILE NO. 93-021

REVENUE:

Pay Over of Annual Real Estate Tax
and Personal Property Replacement Tax
Proceeds to Local Libraries

Honorable George H. Ryan
Secretary of State and
State Librarian
State House, Room 213
Springfield, Illinois 62756

Dear Secretary Ryan:

I have your letter wherein you inquire regarding the procedures for distribution of real estate tax and personal property replacement tax proceeds to the Quincy Public Library.

Specifically, you have posed the following questions:

1. Is the city of Quincy required to deposit into the library fund the proceeds from the annual real estate tax immediately upon receipt from the Adams County Treasurer, or may the city retain such funds, at least temporarily, subject to eventual payment through periodic installments throughout the fiscal year?

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2. Is the city required to deposit into the library fund the library's portion of the personal property replacement tax proceeds immediately upon receipt from the State of Illinois, or may the city retain such funds, at least temporarily, subject to eventual payment through periodic installments throughout the fiscal year? And,
3. If the city of Quincy is permitted to, or does in fact, retain and invest the real estate tax proceeds and personal property replacement tax proceeds for at least some portion of the fiscal year, may the city retain the interest income generated from such investments, or must such income be paid over to the library fund?

The Quincy Public Library was created by the city of Quincy, a home rule municipality with a current population of approximately 40,000 inhabitants. According to the information you have provided, the Quincy Public Library is subject to the provisions of the Illinois Local Library Act (Ill. Rev. Stat. 1991, ch. 81, par. 1-0.1 et seq.; 75 ILCS 5/1-0.1 et seq. (West 1992)). Therefore, before responding to your specific questions, it is helpful to review the provisions of that Act.

Article 4 of the Illinois Local Library Act (Ill. Rev. Stat. 1991, ch. 81, par. 4-1 et seq.; 75 ILCS 5/4-1 et seq. (West 1992)), provides for the appointment of a board of library trustees which is authorized to conduct the business affairs of the library. (Ill. Rev. Stat. 1991, ch. 81, par. 4-7; 75 ILCS 5/4-7 (West 1992).) Although a board of library trustees of a public library is authorized to conduct the library's affairs and has been granted, inter alia, exclusive control over the

expenditure of all monies collected for the library and deposited to the credit of the library fund (Ill. Rev. Stat. 1991, ch. 81, par. 4-7; 75 ILCS 5/4-7 (West 1992)), the board has not been granted the authority to levy or collect its own taxes. Rather, the board is required to submit to the corporate authorities of the municipality an annual report which outlines the library's financial requirements for the ensuing fiscal year. (Ill. Rev. Stat. 1991, ch. 81, par. 4-10; 75 ILCS 5/4-10 (West 1992).) In turn, the corporate authorities of the municipality are required to levy a tax for library purposes in the amount determined by the board. (Ill. Rev. Stat. 1991, ch. 81, par. 3-5; 75 ILCS 5/3-5 (West 1992).)

Although a library board has been authorized to determine the amount of taxes to be levied for library purposes, the corporate authorities of the municipality must generally adhere to the statutory requirements when levying library taxes. In this regard, when levying a tax for library purposes, the corporate authorities of a municipality are generally limited to a maximum tax rate of .15% of the equalized assessed valuation of the property in the city. (Ill. Rev. Stat. 1991, ch. 81, par. 3-1; 75 ILCS 5/3-1 (West 1992).) A local library's taxes are to be collected in the same manner and at the same time as the municipality's general taxes. Upon receipt, the tax proceeds are to be deposited in a special fund known as the library fund.

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(Ill. Rev. Stat. 1991, ch. 81, par. 3-5; 75 ILCS 5/3-5 (West 1992).)

As previously noted, however, the city of Quincy is a home rule unit. You have indicated that the city has exercised its home rule powers by increasing the real estate tax rate for library purposes from .15% to .39% of the equalized assessed valuation of the property in the city of Quincy. In City of Rockford v. Gill (1979), 75 Ill. 2d 334, the Illinois Supreme Court held that such an increase in the library tax rate was a valid exercise of home rule powers. The mere fact that the city has elected to increase the tax limit, however, does not mean that it may ignore the other statutory requirements relating to the levy of library taxes.

In reviewing the finances of the Quincy Public Library [hereinafter referred to as "the Library"], it appears that approximately 95% of the Library's annual budget is funded by the proceeds of the real estate tax levied by the corporate authorities of the city of Quincy and the personal property replacement tax funds received by the city of Quincy from the State. You have noted, however, that upon receipt of these proceeds, the city of Quincy does not immediately pay over to the library fund those monies which are allocated for library purposes. Instead, it appears that the Library's share of the tax proceeds are distributed to it by the city in a series of

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equal installments over the course of the entire fiscal year. By way of illustration, you state that the Library's tax proceeds for fiscal year 1991-92 totaled \$1,025,499. This amount was paid over by the city to the library fund in 24 bimonthly payments of \$42,727. You have further indicated that monies not yet paid over to the library fund are either invested by the city of Quincy or used to meet the city's own cash flow requirements with the city retaining any interest income generated by the investments.

In response to your first question, under the pertinent provisions of the Illinois Local Library Act, the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 1-1-1 et seq.; 65 ILCS 5/1-1-1 et seq. (West 1992)) and the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 482 et seq., as amended by Public Act 87-877, effective July 28, 1992; 35 ILCS 205/1 et seq. (West 1992)), the General Assembly has enacted specific provisions for distributing real estate taxes levied for library purposes. Section 8-3-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 8-3-1; 65 ILCS 5/8-3-1 (West 1992)) provides for the levy of taxes for corporate purposes, including taxes for the operation and maintenance of libraries. Sections 8-3-2 and 8-3-3 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, pars. 8-3-2, 8-3-3; 65 ILCS 5/8-3-2, 8-3-3 (West 1992)) provide, respectively:

"§ 8-3-2. The taxes levied under Section 8-3-1 shall be collected and enforced in the same manner and by the same officers as state and county taxes, and shall be paid over by the officers collecting the tax to the municipal treasurer, or, in the case of a tax levied for library purposes in municipalities having not to exceed 50,000 inhabitants, to the board of directors of the library.

§ 8-3-3. The officer collecting the taxes levied under Section 8-3-1 shall settle with and pay over to the municipal treasurer, or, in the case of a tax levied for library purposes in municipalities having not to exceed 50,000 inhabitants, to the board of trustees of the library, as often as once in 2 weeks from the time he commences the collection thereof, all taxes he has then collected, till the whole tax collected is paid over. The expenditures of taxes levied for library purposes, whether expended by the municipal treasurer or by the board of library trustees shall be made pursuant to the direction of the board of library trustees." (Emphasis added.)

Similarly, section 3-5 of the Illinois Local Library Act (Ill. Rev. Stat. 1991, ch. 81, par. 3-5; 75 ILCS 5/3-5 (West 1992)) provides:

"The library taxes provided for in this Act shall be levied by the corporate authorities in the amounts determined by the board and collected in like manner with other general taxes of the city, village, incorporated town or township and the proceeds shall be deposited in a special fund, which shall be known as the library fund. In townships and in cities, villages and incorporated towns having a population of 50,000 or less the proceeds of any such tax shall be paid over by the officer charged with the collection thereof to the board of trustees of the library. Expenditures from

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the library fund shall be under the direction of the board of library trustees." (Emphasis added.)

Under the plain language of the statutes quoted above, in municipalities with a population of less than 50,000 inhabitants, the officer charged with collecting municipal taxes is required to pay over the proceeds of a tax levied for library purposes directly to the library's board of directors. (As previously indicated, the city of Quincy has a population of approximately 40,000 inhabitants.) Therefore, the Treasurer of Adams County (see Ill. Rev. Stat. 1991, ch. 120, pars. 657, 679, as amended by Public Act 87-1119, effective May 13, 1993, 688 and 761, as amended by Public Acts 87-1119, effective May 13, 1993, and 88-0045, effective July 6, 1993; 35 ILCS 205/176, 198, 207 and 280 (West 1992)) is required to pay over directly to the library trustees the Library's share of the real estate taxes levied by the city of Quincy. Consequently, it is my opinion that the city of Quincy should not receive, or hold in its treasury, real estate tax proceeds which belong to the Library. Since the city is not authorized to receive the proceeds of the library taxes in the first instance, it has no authority to invest those funds or pay them to the Library on a periodic basis.

Your next inquiry concerns whether the city of Quincy is required to pay over to the Library the Library's portion of

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the proceeds from the personal property replacement tax immediately upon receipt from the State, or whether the city may retain the monies to be distributed in installments through the fiscal year. Section 12 of the State Revenue Sharing Act (Ill. Rev. Stat. 1991, ch. 85, par. 616; 30 ILCS 115/12 (West 1992)) was enacted in 1979 to effectuate the constitutional mandate to abolish all ad valorem personal property taxes and thereafter to replace all revenue lost by units of local government and school districts as a result of that abolition. (Ill. Const. 1970, art. IX, sec. 5(c).) Section 12 of the State Revenue Sharing Act provides, in pertinent part:

"Personal Property Tax Replacement Fund. There is hereby created the Personal Property Tax Replacement Fund, a special fund in the State Treasury into which shall be paid all revenue realized:

* * *

The payments of revenue into the Personal Property Tax Replacement Fund shall be used exclusively for distribution to taxing districts as provided in this Section, payment of the expenses of the Department of Revenue incurred in administering the collection and distribution of monies paid into the Personal Property Tax Replacement Fund and transfers due to refunds to taxpayers for overpayment of liability for taxes paid into the Personal Property Tax Replacement Fund.

* * *

Prior to December 31, 1980, as soon as may be after the end of each quarter beginning with the quarter ending December

31, 1979, and on and after December 31, 1980, as soon as may be after January 1, March 1, April 1, May 1, July 1, August 1, October 1 and December 1 of each year, the Department of Revenue shall allocate to each taxing district as defined in Section 1 of the Revenue Act of 1939, in accordance with the provisions of paragraph (2) of this Section, the portion of the funds held in the Personal Property Tax Replacement Fund which is required to be distributed, as provided in paragraph (1), for each quarter. * * * Except as provided in Section 13 of this Act, the Department shall then certify, pursuant to appropriation, such allocations to the State Comptroller who shall pay over to the several taxing districts the respective amounts allocated to them.

* * *

Any municipality or township, other than a municipality with a population in excess of 500,000, which receives an allocation based in whole or in part on personal property taxes which it levied pursuant to Sections 3-1, 3-4 and 3-6 of 'The Illinois Local Library Act' and which was previously required to be paid over to a public library shall immediately pay over to that library a proportionate share of the personal property tax replacement funds which such municipality or township receives; provided that if such a public library has converted to a library organized under the Illinois Public Library District Act, regardless of whether such conversion has occurred on, after or before January 1, 1988, such proportionate share shall be immediately paid over to the library district which maintains and operates the library. * * *

* * *

Any taxing district which receives an allocation based in whole or in part upon personal property taxes which it levied for another governmental body or school district

in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section, had it levied its own taxes.

* * *

(2) Each quarterly allocation shall first be apportioned in the following manner: 51.65% for taxing districts in Cook County and 48.35% for taxing districts in the remainder of the State.

The Personal Property Replacement Ratio of each taxing district outside Cook County shall be the ratio which the Tax Base of that taxing district bears to the Downstate Tax Base. The Tax Base of each taxing district outside of Cook County is the personal property tax collections for that taxing district for the 1977 tax year. The Downstate Tax Base is the personal property tax collections for all taxing districts in the State outside of Cook County for the 1977 tax year. The Department of Revenue shall have authority to review for accuracy and completeness the personal property tax collections for each taxing district outside Cook County for the 1977 tax year.

* * *

(Emphasis added.)

Under the language quoted above, the State Comptroller is required to make payments to the several taxing districts for that amount allocated to them from the personal property tax replacement fund. Upon receipt, municipalities which receive allocations based upon taxes levied pursuant to the provisions of

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the Illinois Local Library Act, or for the benefit of another governmental body generally, are required to pay over to the public library or other governmental body their respective shares of the personal property replacement tax proceeds immediately.

It has previously been determined that local libraries are "governmental bodies", for purposes of section 12 of the State Revenue Sharing Act. (1981 Ill. Att'y Gen. Op. 27, 30.) Therefore, under the language of section 12 of the Act, a local library is clearly entitled to receive its personal property replacement tax funds immediately from the municipality which receives the allocation.

Although the term "immediately" is not defined in the State Revenue Sharing Act, a statutory term which is not defined must be given its ordinary and popularly-understood meaning. (In re Estate of Callahan (1991), 144 Ill. 2d 32, 43.) In this regard, the term "immediately" commonly refers to that which occurs without any intervention of time, instantly or as soon as the proper legal steps can be taken. (Hall v. American Bankers Insurance Co. (1925), 315 Ill. 252, 257.) Based upon the foregoing, it is my opinion that the city is required to pay over to the Library the Library's share of the personal property replacement tax proceeds as soon as the monies are received from the State. Thus, the city is not authorized to postpone the

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distribution of the Library's personal property replacement tax proceeds.

This conclusion, however, does not necessarily mean that the city is required to make an annual lump sum pay over to the Library of all monies due. Because the State may make more than one distribution to the city of Quincy, the city may, in turn, make more than one distribution to the Library in a given fiscal year. The fact that periodic payments may be necessitated by the frequency of State distributions, however, does not authorize the maintenance of the bi-weekly installment plan which is currently used by the city.

As a final matter, you have raised the issue of whether the city of Quincy may retain any interest income which may be generated from either the real estate tax proceeds or the personal property tax proceeds prior to the pay over of those monies to the Library. Because the real estate tax proceeds are required to be paid over by the county treasurer directly to the Library, and because the personal property replacement tax funds are to be distributed to the Library immediately upon receipt by the city, there ordinarily should be no investment by the city or accrual of interest in these circumstances. If, because of short term investment, interest does accrue while tax proceeds are in the hands of the city or the county treasurer, however, it is clear that the Library would be entitled to receive the interest

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earned on the funds. See Board of Commissioners of the Wood Dale Public Library District v. County of DuPage (1983), 96 Ill. 2d 378; Village of Pawnee v. Johnson (1984), 103 Ill. 2d 411.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS
ATTORNEY GENERAL