



**TYRONE C. FAHNER**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. 82-008

OFFICERS:  
Investment Authority of  
State Treasurer

Honorable Jerry Cosentino  
Treasurer of the State of Illinois  
219 State House  
Springfield, Illinois 62706

Dear Mr. Cosentino:

I have your letter in which you inquire whether you are authorized to purchase or invest in securities issued by the trust company of a national bank, said trust company not acting individually, but as a trustee:

- "1. Where part one of the transaction is represented by securities backed by the full faith and credit of the national bank as a direct obligation of said bank; and
2. Where the second part of the transaction is represented by securities backed by and limited to a mortgage pool of completed industrial and commercial mortgages are insured."

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In the alternative, you inquire whether you may invest in identical securities issued by a savings and loan association.

Although your first question contemplates acquisition of the securities from a bank, you have described the securities in which investment is contemplated as investment certificates of a nature ordinarily issuable and issued by savings and loan associations. Initially, the securities would be direct obligations of the bank. Later, the securities would be backed by and limited to a mortgage pool of completed industrial and commercial mortgages, with the mortgages insured by a private insurance company.

The State Treasurer has authority to deposit and invest funds in his custody pursuant to the provisions of "AN ACT in relation to State moneys" (Ill. Rev. Stat. 1979, ch. 130, par. 20 et seq.) and "AN ACT relating to certain investments of public funds by public agencies" (Ill. Rev. Stat. 1979, ch. 85, par. 901 et seq.). (Town of City of Peoria v. O'Connor (1980), 85 Ill. App. 3d 427, 434; 1971 Ill. Att'y Gen. Op. 1.) Section 2 of the latter Act (Ill. Rev. Stat. 1980 Supp., ch. 85, par. 902) provides in pertinent part as follows:

"Any public agency may invest any public funds (1) in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest, or (2) in interest-bearing savings accounts,

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interest-bearing certificates of deposit or interest-bearing time deposits constituting direct obligations of any bank as defined by the Illinois Banking Act, or (3) in short term obligations of corporations organized in the United States with assets exceeding \$500,000,000 if (a) such obligations are rated at the time of purchase within the 3 highest classifications established by at least 2 standards rating services and which mature not later than 180 days from the date of purchase, and (b) no more than 25% of any fund is invested in such obligations at any time and (c) such purchases do not exceed 10% of the corporation's outstanding obligations. Investments may be made only in those interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits in banks which are insured by the Federal Deposit Insurance Corporation. \* \* \*

\* \* \*

"

(Emphasis added.)

Those provisions of "AN ACT in relation to State moneys" relating to banks refer to a depository rather than an investment scheme. Therefore, there is no authority, under the aforementioned Act, to invest in bank securities of the nature described above. Further, section 2 of "AN ACT relating to certain investments, etc." limits investment in a bank to interest-bearing savings accounts, interest-bearing certificates of deposit and interest-bearing time deposits constituting direct obligations of the bank. The securities you have described do not fall within any of the aforementioned categories of authorized investment and therefore, since you are limited to the exercise of those powers expressly granted or necessarily implied

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therefrom (United States v. Jones (7th Cir. 1953), 204 F. 2d 745, 754; McKenzie v. McIntosh et al. (1964), 50 Ill. App. 2d 370, 377), you have no authority to invest in the securities described, should such securities be issued by a bank.

Alternatively, you inquire whether a similar investment could be made in securities issued by a savings and loan association. In response to your question, I refer you to section 22 1/2 of "AN ACT in relation to State moneys" (Ill. Rev. Stat. 1979, ch. 130, par. 41a) which provides in pertinent part as follows:

" \* \* \*

The State Treasurer may, with the approval of the Governor, invest or reinvest any State money in the treasury which is not needed for current expenditure due or about to become due, or any money in the State Treasury which has been set aside and held for the payment of the principal of and the interest on any State bonds, in shares, withdrawable accounts, and investment certificates of savings and building and loan associations, incorporated under the laws of this State or any other State or under the laws of the United States; provided, however, that investments may be made only in those savings and loan or building and loan associations the shares and withdrawable accounts or other forms of investment securities of which are insured by the Federal Savings and Loan Insurance Corporation.

\* \* \*

"

(Emphasis added.)

It is clear, under the above language, that you have authority, with the approval of the Governor, to invest State moneys in

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investment certificates issued by a federally-insured savings and loan association.

I have not had an opportunity to examine the form of the securities in which investment is contemplated, but I have been advised that the securities are of a nature ordinarily issuable by a savings and loan association and thus fall within the generic term "investment certificate".

I have been unable to locate a statutory or case law definition of the term "investment certificate". A reading of the term together with similar and complementary authority granted in section 2 of "AN ACT relating to certain investments, etc." evinces legislative intent to give the term a broad meaning. In particular, I would refer you to the following portion of section 2:

"\* \* \* Any public agency may invest any public funds in short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings and loan associations incorporated under the laws of this state or any other state or under the laws of the United States. \* \* \*

\* \* \*

"

(Emphasis added.)

Under the above language, it appears that the key to the determination as to whether or not any given investment in a savings and loan is permissible is an examination of the

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authority of the savings and loan vis-a-vis the securities. If the securities are legally issuable by a savings and loan, they would appear to be comprehended by the term "investment certificate" and thus, permissible investments.

Therefore, it is my opinion that you are authorized, with the approval of the Governor, to invest State funds in the securities in question provided such securities are issued by a federally-insured savings and loan association and provided such securities are of a nature legally issuable by a savings and loan association.

Very truly yours,

A T T O R N E Y G E N E R A L