



OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

February 2, 1998

Jim Ryan

ATTORNEY GENERAL

FILE NO. 98-003

FINANCE:

Use of Bank Services Trust Fund

The Honorable Judy Baar Topinka
Treasurer
100 West Randolph Street, Suite 15-600
Chicago, Illinois 60601

Dear Treasurer Topinka:

I have your letter wherein you inquire whether the costs of banking services incurred by the State Treasurer as ex officio custodian of the Illinois State Toll Highway Authority Fund may properly be paid from the Bank Services Trust Fund, or may only be paid from the Illinois State Toll Highway Authority Fund. For the reasons hereinafter stated, it is my opinion that the Treasurer, as ex officio custodian of the Illinois State Toll Highway Authority Fund, is authorized to pay the costs of banking services related to that Fund from the Bank Services Trust Fund.

Section 10 of the State Treasurer's Banking Services Trust Fund Act (30 ILCS 212/10 (West 1996)) provides:

"Creation of Fund. There is hereby created in the State treasury a special fund

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to be known as the State Treasurer's Bank Services Trust Fund. Moneys deposited in the Fund shall be used by the State Treasurer to pay the cost of the following banking services: processing of payments of taxes, fees, and other moneys due the State; transactional charges related to the investment or safekeeping of funds under the Treasurer's control; and the cost of paying bondholders under the State's general obligation bond program."

Under section 24 of the Toll Highway Act (605 ILCS 10/24 (West 1996)), the State Treasurer is designated the ex officio custodian of the Illinois State Toll Highway Authority Fund. Section 25 of the Toll Highway Act (605 ILCS 10/25 (West 1996)) provides:

"After the issuance of revenue bonds to finance the construction of toll highways, and repayment from the proceeds of such bonds of any amount repayable to the state treasury pursuant to Section 18, the expenses of the Authority, and the compensation of the members thereof, and all other costs of said toll highways and its administration and operation shall be paid from the proceeds of such bond issues or from the moneys received by the Authority as tolls or otherwise in the operation of said toll highways."

It is your position that under section 25 of the Toll Highway Act, the costs incurred by the Treasurer for banking services related to her custody of the Illinois State Toll Highway Authority Fund constitute "expenses of the Authority" which are properly payable under section 25 of the Toll Highway Act only from the Authority's funds, and not from the State

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Treasurer's Bank Services Fund. It is my understanding that an agreement has been negotiated between your office and the Authority pursuant to which the Authority has agreed to pay the costs of banking services relating to its funds beginning with Fiscal Year 1997 and for future years. You have further requested, however, that the Authority reimburse the General Revenue Fund for the costs of such banking services which have been paid from the State Treasurer's Bank Services Fund since its creation in 1992 (see Public Act 87-1035, effective September 11, 1992). It is only these prior expenditures that are at issue.

It should be noted that prior to the enactment of the Bank Services Trust Fund Act, the Treasurer had traditionally "paid for" banking services by maintaining compensating balances in financial institutions. (30 ILCS 212/2 (West 1996).) Presumably, the expenses of banking services relating to the Illinois State Toll Highway Authority Fund were met in that manner prior to 1992. The Bank Services Trust Fund Act was intended to authorize the Treasurer to enter into agreements with financial institutions for a more efficient method of compensation (30 ILCS 212/2 (West 1996)). Section 10 of the Act does not limit the use of the Fund to costs relating to any specific funds; to the contrary, its plain language extends to "transactional charges related to the investment or safekeeping of funds under the Treasurer's control" without qualification.

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In its discretion, the General Assembly determined, when the Toll Highway Authority was created, to delegate the custody of its funds to the State Treasurer instead of to an officer of the Authority. The duty of the Treasurer to keep those funds safe and to see to the performance of the various financial transactions required by the Authority is no different than the duty owed to any other agency whose funds are committed to the custody of the Treasurer. Although you have suggested that these costs should be considered expenses of the operation and administration of the Authority, within the meaning of section 25 of the Toll Highway Act, the costs are just as logically characterized as expenses of the office of the Treasurer. Those costs, after all, relate directly to the performance of the Treasurer's statutory duties as custodian of the Illinois State Toll Highway Authority Fund.

Moreover, it is axiomatic that a specific enactment in a statute will prevail over general provisions on the subject either in the same statute or in general laws relating thereto. (People ex rel. Goodman v. Wabash Ry. Co. (1947), 395 Ill. 520, 540.) The Bank Services Trust Fund Act is a specific enactment relating solely to the payment of banking costs by the Treasurer, and directing that the enumerated costs be paid from the fund created for that purpose. Although section 25 of the Toll Highway Act directs the payment of administrative expenses from

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the funds of the Authority generally, and bank services charges incurred by the Treasurer relating to the custody of the Authority's funds could be included in administrative expenses, they are not specifically so designated. Consequently, the specific direction to the Treasurer to pay the costs of banking services charges from the Bank Services Trust Fund could be construed to prevail over the general language of section 25 of the Toll Highway Act.

For the reasons stated, it is my opinion that it is not improper for bank services charges relating to the custody of the Illinois State Toll Highway Authority Fund to be paid from the Treasurer's Bank Services Trust Fund. Therefore, I do not believe that the Toll Highway Authority is obligated to reimburse the Treasury for such costs incurred by the Treasurer prior to the effective date of the agreement pursuant to which the Authority agreed to begin paying those costs.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JAMES E. RYAN
ATTORNEY GENERAL