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STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

September 20, 1974

No. S-807

APPROPRIATIONS:
Expenditures During
Lapse Period

Joseph D. Boyd
Executive Director
Illinois State Scholarship Commission
Box 607
102 Wilmot Road
Deerfield, Illinois 60015

Dear Mr. Boyd:

This responds to your request for an opinion as to whether during the lapse period three specific classes of expenditures made by the Illinois State Scholarship Commission may be paid from the appropriation for the previous fiscal year, or must be made from the appropriation for the current fiscal year.

Section 25 of "AN ACT in relation to State finance (Ill. Rev. Stat. 1973, ch. 127, par. 161) provides in pertinent part as follows:

> "§ 25. 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."

This provision has not been subject to interpretation by the courts. The lapse period provided by this statute is primarily a tool of legislative control. Its main purpose is to permit the State to close the books on the appropriations of the legislative session. The lapse period should not be used for maneuvering to avoid the lapse of an annual appropriation, and thus thwart the purpose of an annual appropriation, which is to render all departments of the State government dependent upon the will of the people and to require such departments of government to return to the legislature on a yearly basis for the necessary means of existence. See Rein v. Johnson, 30 N.W. 2d 548, 555 (Neb. 1947), and the explanation provided by Committee on Revenue and Finance in Proposal No. 1 before the Illinois Constitutional Convention of 1970, 6th Ill. Const. Conv., Committee Proposals, Vol. VII, p. 2027.

From the plain language of the provision quoted above, it appears that two criteria must be met before an item can be paid during a lapse period from the previous fiscal year's appropriation. The first is that the item was an outstanding liability on June 30 and not merely a potential liability and second, that it was otherwise payable from the previous fiscal year's appropriation.

Your first specific class of expenditures pertains to payments made to colleges in regard to scholarships and grants awarded by certificates to students before June 30, but because colleges usually do not submit final enrollment verifications until after June 30, the payments have not been made. The State has obligated itself before June 30 to award specific scholarships and grants for specific amounts of money. It awaits only the enrollment verifications from the colleges before making the payments. If the enrollmant verifications come in before June 30, there is no question that the payments could be made out of that year's appropriation. I am therefore of the opinion that such payments can be made during the lapse period from the previous fiscal year's appropriation.

Your second class of expenditures concerns payments to lenders for guaranteed student loans which went into actual default during the lapse period. Section 30-15.12 of the

Higher Education Student Assistance law (Ill. Rev. Stat. 1973, ch. 122, par. 30-15.12) states in pertinent part as follows:

> "* * * The Commission has the authority to reimburse a lender not earlier than the following dates: (a) upon submission of proof by the lender of the borrower's death, or total and permanent disability as determined by the Commission, or filing of bankruptcy; or, (b) 120 days following the non-signing of a Payout Note, when due, as determined by the borrower's Interim Note or Deferment Agreement; or, (c) 120 days following the nonpayment of an installment of a loan repayable in monthly installments; or, (d) 180 days following the nonpayment when due of an installment of a loan repayable less often than monthly; or, (e) upon determination by the Commission that the borrower has no intention of honoring his obligation to the lender, and upon submission of proof that the lender has made repeated attempts to collect the funds due."

Under this provision the State is not authorized to reimburse lenders earlier than the dates specified in the statute. If this time has not elapsed during the fiscal year, the payments cannot be made during the lapse period from the previous fiscal year's appropriation since the State could not have paid before the end of the fiscal year. Since the guarantees may have been entered into several years previous, there is nothing to tie the reimbursements uniquely to the previous fiscal year. If the time required by the statute had elapsed during the previous fiscal year, payment could be made during the lapse period from the previous fiscal year's appropriation.

Your third class of expenditures pertains to your obligation to make payments to the United States Office of Education under a coinsurance agreement with that office. You state in your letter in part as follows:

> "That agreement permits Illinois to be reimbursed 80% on defaults and 100% on deaths and permanent disabilities. When we, however, in our collection efforts, effect any repayment to ISSC by the defaulted borrower, 80% of that repayment must be returned to the USOE. It is our position that as long as we were reimbursed for an account by the USOE prior to June 30, we can return to USOE the required 80% of any loan payments we collect during the lapse period on that same account."

I am of the opinion that again this payment must come from the current fiscal year's appropriation. While on June 30 there may be an obligation to make efforts to collect from the defaulted borrower, there is only a potential obligation to pay any amount at all to the United States Office of Education, and the amount of such obligation depends on the success of the collection efforts. Since the State has not completed its collection efforts by June 30, it had no outstanding liability to pay the United States Office of Education on that date. Again, there is nothing to tie this payment uniquely to the previous fiscal year since collection efforts could require more than a year. If a collection has been completed before June 30, however, the payment to the USOE could be made from the previous fiscal year's appropriation during the lapse period.

In summary then, your Commission may make payments during the lapse period from the previous fiscal year's appropriation for scholarships and grants awarded before June 30, but not for reimbursement for lenders for student loans which went into actual default during the lapse period, nor for payments to the United States Office of Education if collection from the defaulted borrower has not been completed by June 30.

Very truly yours,

ATTORNEY GENERAL