



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

September 25, 1998

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 98-017

AGRICULTURE:  
Authority of the Director  
of the Department of Agriculture  
to Pay Specified Administrative Costs  
from the Grain Indemnity Trust Account

Ms. Becky C. Doyle  
Director  
Illinois Department of Agriculture  
Post Office Box 19281  
Springfield, Illinois 62794-9281

Dear Ms. Doyle:

I have your letter wherein you inquire whether, under the provisions of the Grain Code (240 ILCS 40/1-1 et seq. (West 1996)), the Director of the Department of Agriculture has the authority to make payment from the Grain Indemnity Trust Account for certain administrative costs incurred by the Department in preserving or liquidating the assets of a failed licensee. For the reasons hereinafter stated, it is my opinion that these administrative costs may not properly be paid out of, or be reimbursed from, monies held in the Grain Indemnity Trust Account.

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You have indicated that recently the Illinois Grain Insurance Corporation was the subject of an audit performed on behalf of the Auditor General. The audit report contained, inter alia, a specific finding that "[t]he Illinois Grain Insurance Corporation does not reimburse the Illinois Department of Agriculture (IDOA) for administrative costs incurred by IDOA employees that pertain to Corporation duties". (See "State of Illinois, Illinois Grain Insurance Corporation, Financial and Compliance Audit For the Year Ended June 30, 1997", Finding 97-2 at 12.) In reaching this conclusion, the audit report noted that the Department of Agriculture provides all administrative support for the Grain Insurance Corporation at an annual cost to the Department of Agriculture of approximately \$22,000. In addition, the audit report indicated that the Department of Agriculture incurs extraordinary expenses when grain dealers or warehousemen become insolvent. The audit report then concluded that "[t]he Grain Code \* \* \* allows for the payment of these administrative costs through reimbursement to the Grain Indemnity Trust Account" and that "\* \* \* such administrative costs should be paid by the Corporation". Thus, the audit report recommended that the Illinois Department of Agriculture negotiate an agreement with the Grain Insurance Corporation for reimbursement of the Department's costs. Against this background, you have inquired whether the Director of the Department of Agriculture may make payment from the Grain Indemnity Trust Account for the administrative

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costs incurred by the Department of Agriculture in preserving or liquidating the assets of a failed Grain Code licensee.

In resolving your inquiry, it is helpful to review the genesis of the Grain Code. In 1871, the General Assembly passed "AN ACT to regulate public warehouses, and the warehousing and inspection of grain, and to give effect to article thirteen of the constitution of this state" (Ill. Rev. Stat. 1874, ch. 114, pars. 96 through 122), which was the original legislative enactment intended to protect a farmer's investment in stored grain by, inter alia, requiring persons operating a storage warehouse to obtain a license and to issue receipts for grain received. That Act was amended on several occasions before being repealed and replaced by The Public Grain Warehouse and Warehouse Receipts Act (Ill. Rev. Stat. 1957, ch. 114, pars. 214.1 through 214.27). In addition to regulating warehousemen, the General Assembly also enacted "AN ACT to license and regulate grain dealers engaged in the business of purchasing grain from producers thereof and making an appropriation in connection therewith" (hereinafter the "Grain Dealers Act") (Ill. Rev. Stat. 1969, ch. 5, par. 301 et seq.), which was intended to relieve the financial losses suffered by grain producers availing themselves of the services of grain dealers by requiring a license and the filing of a surety bond from which producers could be compensated. Hicks v. Williams (1982), 104 Ill. App. 3d 172.

Despite these legislative efforts to protect against the economic loss which accompanies elevator failures, an " \* \* \*

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empirical study of elevator failures in eight Midwestern states during the period of 1974-1982, found that Illinois [grain] producers recovered an average of 65 percent of their losses. This percentage of recovery, although highest among the eight states surveyed, indicated the need for additional economic protection. As a result, in 1983, the Illinois Grain Insurance Act was enacted into law". (Neil F. Hartigan, The Illinois Grain Insurance Act: Deserved and Cost-Efficient Protection for Rural Communities, 7 Journal of Agricultural Taxation & Law 99, 100-1 (1985).)

The Illinois Grain Insurance Act provided for the creation of the Illinois Grain Insurance Fund (Ill. Rev. Stat. 1983, ch. 114, par. 705; 240 ILCS 25/5 (West 1994)), a fund which was intended to contain at least \$3,000,000 generated by mandatory assessments against grain dealers and warehousemen over a period of three years and from which claimants could be compensated for their losses. (Ill. Rev. Stat. 1983, ch. 114, par. 705; 240 ILCS 25/5 (West 1994).) In addition, the Act created the Illinois Grain Insurance Corporation and authorized the Corporation, inter alia, to administer the Grain Insurance Fund. (Ill. Rev. Stat. 1983, ch. 114, pars. 703 and 706; 240 ILCS 25/3 and 6 (West 1994).) Under the original language of the Illinois Grain Insurance Act, the Grain Insurance Corporation was authorized "upon the request of the Director [of the Department of Agriculture], to make payment from the Illinois Grain Insurance Fund to the Grain Indemnity Trust Fund when such payment is

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necessary for the purpose of compensating claimants. \* \* \*

(Ill. Rev. Stat. 1983, ch. 114, par. 703; 240 ILCS 25/3 (West 1994).) Moreover, under section 6 of the Act (Ill. Rev. Stat. 1983, ch. 114, par. 706; 240 ILCS 35/6 (West 1994)), moneys in the fund were not "\* \* \* available for any purpose other than the payment of claims pursuant to this Act \* \* \*". Based upon this language, Attorney General Neil Hartigan, the chief proponent of the Act, as well as one of the original members of the Board of Directors of the Grain Insurance Corporation, has stated that moneys from the Fund were "\* \* \* to be used exclusively for compensating claimants under the program \* \* \*" and that "[n]either the corpus of the fund nor the interest accruing thereon \* \* \* [was to] be used for administrative expenses or for any purpose other than the compensation of claimants. (Hartigan, The Illinois Grain Insurance Act: Deserved and Cost-Efficient Protection for Rural Communities, 7 Journal of Agricultural Taxation & Law at 111.)

Although the Illinois Grain Insurance Act brought significant protections to the State's agri-business industry, there were calls for the reorganization of the entire regulatory mechanism. Therefore, the "\* \* \* Department of Agriculture convened a Grain Committee which included representatives of the Illinois Grain and Feed Association, Illinois Farm Bureau, Illinois Farmers Union[,] \* \* \* the Illinois Bankers Association and [the] Illinois Community Bankers \* \* \*. (See Remarks of Rep. Noland, April 21, 1995, House Debate on House Bill No. 1490 at

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75, which as enacted became Public Act 89-287, effective January 1, 1996.) Ultimately, these groups and other affected parties worked with the General Assembly to combine and rework the provisions of the Public Grain Warehouse and Warehouse Receipts Act, the Grain Dealers Act and the Illinois Grain Insurance Act to create the Grain Code. (See Remarks of Rep. Noland, April 21, 1995, House Debate on House Bill No. 1490 at 74, which as enacted become Public Act 89-287, effective January 1, 1996.)

In its current form, the Grain Code provides "a single system of government regulation of the Illinois grain industry" and "promotes the State's welfare by improving the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund", a special fund from which grain producers and other persons holding valid claims "may be compensated for losses occasioned by the failure of a licensed grain dealer or licensed warehouseman. (240 ILCS 40/1-5 (West 1996).) In order to accomplish these purposes, the Grain Code continues to require any person who desires to "engage in business as a grain dealer, an incidental grain dealer, or a warehouseman" to obtain, annually, a license from the Illinois Department of Agriculture. (240 ILCS 40/5-5 (West 1996).) In order to obtain a license from, or to renew a license issued by, the Department, an applicant must, inter alia, tender an application or renewal fee and provide evidence of financial solvency. (240 ILCS 40/5-10 through 5-25 (West 1996).)

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In addition to obtaining a license, applicants for a license and, in certain circumstances, licensees are liable for the payment of a special assessment to be deposited into the Illinois Grain Insurance Fund. (240 ILCS 40/5-30 (West 1996).) The Illinois Grain Insurance Fund remains a trust fund administered by the Illinois Grain Insurance Corporation, a statutorily created public corporation and body politic. (240 ILCS 40/30-5 (West 1996); 20 ILCS 205/40.23 (West 1996).) As part of its administration of the Grain Insurance Fund, the Illinois Grain Insurance Corporation retains its authority, inter alia, to receive monies from the Grain Indemnity Trust Account for deposit into the Grain Insurance Fund, to invest the assets of the Grain Insurance Fund and to make payment from the Grain Insurance Fund to the Grain Indemnity Trust Account pursuant to an appropriate request from the Director. (240 ILCS 40/30-5 and 30-15 (West 1996).) A payment request to the Grain Insurance Fund is authorized following the failure of a Grain Code licensee and the exhaustion of those monies held in the Grain Indemnity Trust Account for the benefit of qualifying claimants. (240 ILCS 40/20-5, 25-5 and 30-5 (West 1996).) Monies in the Grain Indemnity Trust Account are derived primarily from the liquidation of the various assets of failed licensees. (240 ILCS 40/20-5 (West 1996).) You have inquired whether you, as trustee of the Grain Indemnity Trust Account, are authorized to make payment for certain Department of Agriculture administrative costs from the Grain Indemnity Trust Account.

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As previously discussed, monies are placed into the Grain Indemnity Trust Account either through the transfer of funds by the Illinois Grain Insurance Corporation or through the liquidation of a Grain Code licensee. Turning first to the transfer of funds by the Illinois Grain Insurance Corporation, it is well established that public corporations possess only those powers which have been expressly granted to them by the Constitution or by statute, together with those powers which arise by necessary implication therefrom. (People v. Barrett (1943), 382 Ill. 321, 340-45; Latham v. Board of Education (1964), 31 Ill. 2d 178, 186-87; Evans v. Benjamin School District No. 25 (1985), 134 Ill. App. 3d 875, appeal denied.) In this regard, sections 30-5 and 30-15 of the Grain Code (240 ILCS 40/30-5 and 30-15 (West 1996)) respectively provide, in pertinent part:

" \* \* \*

(b) The Corporation has the following powers, together with all powers incidental or necessary to the discharge of those powers in corporate form:

\* \* \*

(8) Upon the request of the Director, to make payment from the Fund to the Trust Account when payment is necessary to compensate claimants in accordance with the provisions of Section 25-20 or for payment of refunds to licensees in accordance with the provisions of this Code.

\* \* \*

"

" \* \* \*

(c) The assets of the Fund shall not be available for any purpose other than the



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payment of valid claims under this Code and the payment of refunds of amounts that the Board determines have been inappropriately paid into the Fund, and may not be transferred to any other fund, other than the Trust Account when necessary to pay valid claims under this Code or to pay refunds authorized by the Board." (Emphasis added.)

As used in the Grain Code, the term "Fund" refers to the Illinois Grain Insurance Fund (240 ILCS 40/1-10 (West 1996)), and the phrase "Trust Account" means the Grain Indemnity Trust Account. (240 ILCS 40/1-10 (West 1996).)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (Bruso v. Alexian Brothers Hospital (1997), 178 Ill. 2d 445, 451.) Legislative intent is best evidenced by the language used in the statute. (Burrell v. Southern Truss (1997), 176 Ill. 2d 171, 174.) Where statutory language is clear and unambiguous, it must be given effect as written. In re B.C. (1997), 176 Ill. 2d 536, 542.

Under the plain and unambiguous language of the sections quoted above, the Illinois Grain Insurance Corporation may transfer monies from the Grain Insurance Fund to the Trust Account for only three purposes: 1) "to compensate claimants in accordance with the provisions of section 25-20" of the Code; 2) to provide "refunds to licensees"; and 3) to pay refunds of amounts inappropriately paid into the Fund. Clearly, the latter two purposes do not include the reimbursement of the Department of Agriculture for its administrative costs in liquidating or

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pursuing the assets of a grain licensee. Therefore, if a transfer may be made, it must be made pursuant to the provisions of section 25-20 of the Code (240 ILCS 40/25-20 (West 1996)).

Section 25-20 of the Grain Code contains a legislative prioritization of payments from the Trust Account to claimants who possess valid claims. Nothing in the language of section 25-20 or in any of the other statutory provisions referred to therein suggests that the Department of Agriculture is a "claimant", as that term is used in the Code (see 240 ILCS 40/1-10 (West 1996)). Consequently, it is my opinion that the Illinois Grain Insurance Corporation does not possess the authority to transfer monies from the Illinois Grain Insurance Fund to the Grain Indemnity Trust Account to reimburse the Department of Agriculture for its administrative costs.

This construction of the language of these provisions of the Grain Code is supported by reference to the Code's legislative history. During the Senate debate on Senate Bill 800, which, when enacted as Public Act 83-68, effective August 16, 1983, created the Illinois Grain Insurance Act (see 240 ILCS 25/1 et seq. (West 1994), repealed by Public Act 89-287, effective January 1, 1996), the provisions of which were incorporated in substantial form into Illinois' Grain Code, the comments of Senator Bruce, the Senate sponsor, provide guidance on the issue of whether Grain Insurance funds may be used for the payment of administrative costs incurred by the Department of Agriculture:

"Senator Bruce:

\* \* \* The House has sent the bill back in substantially amended form but also with entire agreement among the agricultural community; the Attorney General, the Speaker of the House, the Governor has been involved in the discussions. They have sent us back a...a product, I believe, in the meetings that I have attended that will be acceptable to this Body by creating the Illinois Grain Insurance Corporation which has a five-member board composed of the director of the Department of Agriculture, the Attorney General, a designee of the State Treasurer, the director of the Department of Insurance and the chief fiscal officer of the department. They, in fact, will be running the entire program for the State of Illinois. It will require that every grain dealer and grain warehouseman in the State of Illinois be licensed under this Act. \* \* \* We set forth a fee that's based upon the present existing surety bond, and then in addition to that, made a levy against every grain dealer and grain warehouseman in the State of Illinois, a thousand dollars for grain dealers and a sliding schedule for grain warehousemen. So that the fees...so that the...the original fund would be amply provided for quickly, those initial fees are twice the amount for the first year and then go back to the...the fee schedule set forth. Then if there is a recovery against the...the fund, there would be a rate of one-half of those fees. There was a great deal of discussion both in this Body and in the House about the funds that were to be provided, really by farmers in the State of Illinois through a levy against grain dealers and warehousemen that this money not be used for any other purpose in the State of Illinois; and in Section 6 [240 ILCS 25/6 (West 1994)], we make clear that all fees assessed under this Act go into a trust fund and those monies shall not be available for any purpose other than the payment of claims pursuant to this...this Act, and if for any reason, any portion of this Act is declared invalid, then this provision is nonseverable from it. It requires us to appropriate additional monies above the amount that we had set forth and

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then be...reimbursed for those amounts of money once the fees are assessed and come back in. \* \* \* The bill in its present form has the endorsement of the Governor through the Department of Agriculture...a letter has been distributed signed by that department asking for the signature from the Governor. \* \* \*" (Emphasis added.) (Remarks of Sen. Bruce, June 29, 1983, Senate Debate on Senate Bill No. 800 at 84-6.)

These comments clearly show that it was the intent of the original legislation for monies held in the Grain Insurance Fund to be used exclusively for the payment of claims as provided by the Act. This limitation on the use of Grain Insurance Funds is continued by the language of the Grain Code.

With regard to monies otherwise deposited in the Trust Account subsequent to the liquidation of a Grain Code licensee's grain assets, equity assets, collateral and guarantees (see 240 ILCS 40/20-5 (West 1996)), section 20-20 of the Grain Code (240 ILCS 40/20-20 (West 1996)) provides, in pertinent part:

" \* \* \*

(a) The Trustee shall pay from the Trust Account all reasonable expenses incurred by the trustee on or after the date of failure in reference to seizing, preserving, and liquidating the grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, including, but not limited to, the hiring of temporary field personnel, equipment rental, auction expenses, mandatory commodity check-offs, and clerical expenses.

\* \* \*

(Emphasis added.)

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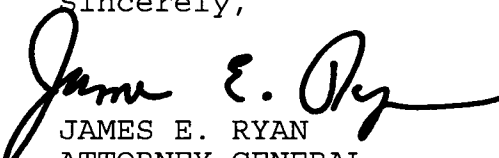
As previously noted, the Director of the Department of Agriculture has been designated as the trustee of the Grain Indemnity Trust Account. (240 ILCS 40/1-15(6) (West 1996).)

It has been suggested that the phrase "reasonable expenses incurred by the trustee" in subsection 20-20(a) of the Code was intended by the General Assembly to include reimbursement of the Department of Agriculture for its employees' salaries and travel expenses related to the preservation or liquidation of licensee's assets. The term "reasonable expenses" is not further clarified in the Grain Code. Under the principle noscitur a sociis, however, words of a statute must be read in context, and associated words should be considered in determining the meaning to be given to an ambiguous word. (See People v. Goldman (1972), 7 Ill. App. 3d 253, 255.) Thus, the general words of a statute take color from the specific words, and are restricted to a sense analogous to the less general. (Dunham v. State (1939), 192 So. 324, 325-26.) Moreover, it is well established that a trustee's powers are determined by the instrument which creates the trust. (Stuart v. Continental Illinois Nat'l Bank & Trust Co. (1977), 68 Ill. 2d 502, 523, cert. denied, 444 U.S. 844, 100 S. Ct. 86 (1979).) Application of these principles leads to the conclusion that the term "reasonable expenses" in section 20-20 of the Code is to be given a relatively restrictive meaning, which does not extend to the reimbursement of the Department of Agriculture's administrative costs.

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The terms with which the phrase "reasonable expenses" are associated in section 20-20, "temporary field personnel," "equipment rental", "auction expenses", and "clerical expenses", are all directly related to the extra costs the Director may incur as trustee of the Grain Indemnity Trust Account when liquidating the assets of a failed licensee. The Department of Agriculture has been assigned specific statutory duties with regard to the liquidation of a licensee (see, e.g., 240 ILCS 40/20-15 (West 1996)). These duties, being prescribed by statute, do not arise as a result of the Director also serving as trustee. Because the language of section 20-20 authorizes the trustee to pay only those expenses incurred by the trustee in liquidating a failed licensee, and nothing in the Grain Code provisions creating the Trust Account authorizes the trustee to pay costs that the Department incurs as a result of a liquidation, it is my opinion that the Director of the Department of Agriculture does not possess the authority to reimburse the Department from the Grain Indemnity Trust Account for the costs the Department of Agriculture may incur as a result of the liquidation of a Grain Code licensee.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL