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FINANCIAL INSTITUTIONS:
Authority of Savings and
Loan Associations to Act
As Depositories For County
Tax Monies

Timothy E. Griffin
Savings and Loan Commissioner
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Griffin:

This responds to your letter requesting my opinion as to whether state-chartered savings and loan associations are authorized to act as deputy county collectors and depositories for county tax monies.

With regard to the first part of your question, you direct my attention to section 184 of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 665) which provides in part that:

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"Collectors may appoint deputies * * * .
And each such deputy shall have like authority,
in every respect, to collect the taxes levied
or assessed within the portion of the taxing
district assigned to him, which by this Act
is vested in the collector himself; * * * "

Although public officers and bodies in general may contract with corporations to provide services, I am aware of no authority for the proposition that corporations may be appointed as deputy collectors. A deputy is "one who is appointed to substitute for another and empowered to act for him in his name or in his behalf". (Saxby v. Sonneman, 318 Ill. 600, 606.) It would be against public policy for corporations to fill such positions. A corporation's officers and employees may change and the public would be without recourse against any individual. Generally, individual employees or officials of a corporation may be appointed with the intent that the facilities of the corporation will be available to such person, but the person so appointed remains accountable to the public.

You next ask whether an Illinois savings and loan association may act as a depository for county tax funds. In my opinion they may. While there is no explicit authority for savings and loan institutions to accept "deposits", under section 1-6 of the Savings and Loan Act (Ill. Rev. Stat. 1975,

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ch. 32, par. 706) savings and loan institutions have authority to perform such reasonable functions as may be required of them when serving as fiscal agents. Under section 1-9(c) (Ill. Rev. Stat. 1975, ch. 32, par. 709(c)), no savings and loan institution may conduct any business at a facility "except receiving deposits * * *". Furthermore, under section 1-6 of the Act a savings and loan institution is authorized under subsection (c):

"(c) Notwithstanding anything to the contrary contained in this Act, to become a member of the Federal Home Loan Bank, and to have all of the powers granted to a savings or thrift institution organized under the laws of the United States and which is located and doing business in the State of Illinois, subject to regulations of the Commissioner, excepting the power to establish branches or offices as prohibited by Section 1-9(b) of this Act;"

Under section 5(b) (1) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) Federal savings and loan associations may accept deposits.

There is no public policy against public funds being placed in savings and loan institutions. Under "AN ACT relating to certain investments of public funds by public agencies" (Ill. Rev. Stat. 1975, ch. 85, pars. 901 et seq.) investments may be made in those savings and loan associations, the shares or investment certificates of which are insured by the Federal Savings and Loan Insurance Corporation.

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The county treasurer is free to deposit public funds as he sees fit. In The People v. West Englewood Bank, 353 Ill. 451, the court stated at page 466:

" * * *

The legislature is without power to compel a treasurer to put the public funds at profitable employment or to impose upon him any hazard whatever. When he assumes the duties of the office he accepts whatever risks and hazards there are incident to the receipt and safekeeping of the public funds, and the General Assembly is powerless to increase his hazard. He is a constitutional officer and the legislature cannot deprive him of his stewardship. Neither can it assume for itself the right to determine the depository for the public funds, whether such depository be a bank or otherwise.
* * * "

This decision was rendered under the Constitution of 1870. Although there is now apparently authority for the General Assembly to alter the common law power of the county treasurer (see section 4(d) of article VII of the Illinois Constitution of 1970), it has not been done. Whether a county board has authority to designate a savings and loan as a depository so as to protect the county treasurer from personal liability as it does with regard to banks under various statutory provisions (see Illinois Revised Statutes 1975, ch. 36, pars. 4b and 20; ch. 120, par. 674), is another question. In this regard, however, see Fitzgerald v. County of Kane, 58 Ill. 2d 112, 116.

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In so advising you on this question I am aware that under section 46 of the Illinois Banking Act (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 146) that only persons, firms, partnerships or corporations having banking powers shall transact the business of receiving money upon deposit; that the Supreme Court in Gorham v. Hodge, 6 Ill. 2d 31, held receipt of deposits a banking function; and that in 1960 my predecessor issued an opinion (1960 Ill. Att'y. Gen. Op. 206) that Illinois savings and loan associations could not act as a depository under section 194 of the Revenue Act of 1939. (Ill. Rev. Stat. 1975, ch. 120, par. 647.) Since these developments, the State has adopted a new Constitution and the Savings and Loan Act has been amended to include the provisions discussed above. (See Public Acts 77-1584, 77-1585, and 79-968.) Thus, public policy with regard to savings and loan institutions has changed considerably. There is no reason savings and loan institutions may not act as depositories of public funds.

Very truly yours,

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