



WILLIAM J. SCOTT

**ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD**



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FILE NO. S-1053

**APPROPRIATIONS:
Expenditure of Appropriations
When Functions Are Transferred**

**Honorable Thaddeus S. Lechowicz
State Representative
Chairman, House Appropriations Committee
State Office Building
Springfield, Illinois 62706**

Dear Representative Lechowicz:

This responds to your request for an opinion in which you ask several questions concerning the expenditure of appropriations by agencies when functions are transferred between those agencies. You have specifically related your questions to the Veterans' Commission and the Scholarship Commission. On August 10, 1975, Public Act 79-372 became effective. It transferred the authority for administering the veterans' scholarship program from the Scholarship Commission to the

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Veterans' Commission. Funds were appropriated to the Veterans' Commission for the purpose of administering that program for fiscal year 1976. The Scholarship Commission had previously entered into scholarship obligations for fiscal year 1975. Rather than pay all these obligations from its fiscal 1975 appropriation it forwarded vouchers for some obligations to the Veterans' Commission which paid them out of its appropriation for fiscal year 1976. Appropriations for both agencies for fiscal year 1976 were not law until July 14, 1975.

In this opinion I will not comment on the propriety of the action taken by these agencies. Generally, legal opinions are only furnished with regard to matters relating to the duties of the officer requesting the opinion. Since the transaction has already taken place, questions regarding the particular transaction would be proper for those who have duties in connection with the review thereof.

I will therefore address myself to the general area since the questions you ask relate to the appropriation process and will provide guidance for future legislation. The discussion in this opinion is based on a general situation. The respon-

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sibility for administering a particular program was transferred from one agency to another. Such transfer became effective and funds were appropriated to the second agency for the purpose of administering that program in fiscal year 1976. The agency which previously had responsibility to administer the program and to which money was appropriated for fiscal year 1975 had previously entered into certain obligations for that fiscal year. Rather than pay all of these obligations from its fiscal year 1975 appropriation it forwarded vouchers for some of these obligations to the agency assuming the program which paid the vouchers out of its appropriation for fiscal year 1976. It transferred no funds to that agency which it could have used to pay such outstanding obligations. Appropriations for both agencies for fiscal year 1976 were not law until after the beginning of the fiscal year. Based on this information you ask several questions which I shall answer in turn.

Your first question is:

Is a State agency authorized to make payments from funds appropriated for a current fiscal year for an outstanding obligation incurred during a prior fiscal year without the express authorization of the legislature?

I am of the opinion that it is not. Section 25 of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1975,

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ch. 127, par. 161) provides in 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. A deficiency or emergency appropriation shall be available for expenditure only through June 30 of the year when the Act making that appropriation is enacted unless that Act otherwise provides.

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.

* * *

Under this section an appropriation is available only to pay obligations arising during the fiscal year for which it is appropriated. If this were not the case, there would be little fiscal control. Obligations of one fiscal year could be paid out of the appropriation for the next fiscal year. This would understate the governmental expenditures for one fiscal year and overstate them for the next. If obligations of one fiscal year could be paid from appropriations for the next, there would be no need for a lapse period or for the Court of Claims to handle such claims as come in after the lapse period expires. Such claims could be paid out of the new appropriation.

Your second question is:

Is language in an appropriation bill to the effect that "this takes effect July 1, 1975,

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or upon becoming law, whichever is later" and similar language in a substantive bill sufficient to prohibit expenditures for indebtedness incurred prior to the effective dates of the Acts? Is that language sufficient to prohibit expenditures by an agency incurred prior to the beginning of the fiscal year?

I am of the opinion that such language used in an appropriation bill is sufficient to prohibit expenditures on indebtedness incurred prior to the beginning of the fiscal year. As previously discussed, funds are appropriated only for expenditures of a particular fiscal year. I do not believe, however, that it is necessarily sufficient to prohibit expenditures for any obligations arising in the fiscal year but prior to the effective date of the appropriation bill. Often appropriation bills are not passed until June 30 and the Governor does not sign them until several days later, even though they are intended to cover the expenditures for the fiscal year that begins on July 1. The legislative intent is usually that an appropriation bill be retroactive to the beginning of the fiscal year. (The People v. Whealan, 353 Ill. 500.) Express language would be required to prohibit such retroactive effect of an appropriation bill. Of course, no agency has authority to expend funds unless it has the substantive authority. If

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it had no substantive authority, it could not validly obligate State money. Substantive acts are generally not considered retroactive unless the legislature's intent is clear. Stigler v. City of Chicago, 48 Ill. 2d 20.

Your third question is:

When a function is transferred from one State agency to another State agency, is all authorized, unpaid indebtedness incurred prior to the transfer, but pursuant to that function transferred to the successor agency as an outstanding liability?

There is no general statute which transfers the outstanding obligations of one agency to another agency when a particular function is transferred. Section 9b of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1975, ch. 127, par. 145a.1) provides for the transfer of an appropriation when functions are transferred. However, it specifically transfers only the unobligated portion of such appropriation. It provides as follows:

"§ 9b. Whenever an appropriation is made to or for the use of any State officer, office, department, division, institution, commission, board or other agency and his or its functions are transferred to a successor, the appropriation or any unobligated part thereof shall be deemed to have been made to such successor to the same extent as if such successor were specifically named in the

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appropriation law. A change in the name or title of any of the above shall be deemed a transfer of functions to a successor."

This clearly implies that the responsibility for existing liabilities or outstanding obligations incurred by an agency are not transferred when the function is transferred. Such outstanding obligations could, however, be transferred by express statutory authorization.

Your fourth question is:

May one State agency expend appropriated funds in payment of an indebtedness incurred by another State agency without express authorization by the legislature? May a State agency expend appropriated funds in payment of an indebtedness incurred pursuant to fulfilling a statutory function that was the statutory responsibility of another agency?

In opinion No. S-835 I advised that an appropriation may be expended only in pursuance of legislative authority and only for the objects and purposes specified unless otherwise expressly permitted by law, and further that a department of State government must find its source of authority in the statute conferring it and can exercise the power conferred only in conformity with the statute. Therefore, the answer to your questions is No. A State agency cannot expend funds appropriated to it to fulfill the statutory functions of another agency unless expressly authorized by law. This is not to say,

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however, that there may not be situations where a State agency can expend its appropriated funds in the joint fulfillment of functions with other agencies.

Your fifth question is:

Is a State agency obligated to make payments on all authorized indebtedness incurred pursuant to fulfilling a statutory function while it still retains statutory responsibility for that function?

As discussed above, once the State or its agencies have entered into a valid obligation, it is responsible for that obligation. However, if its appropriation has lapsed, it does not have the authority to pay and the obligee must collect through the Court of Claims unless the General Assembly provides another means.

I must emphasize that this opinion does not consider or pass on the particular transaction which gave rise to your questions. While the answers to your general questions leave room for inferences regarding that particular transaction, I have not considered any facts or laws peculiar to the two agencies that might alter the general rules.

Very truly yours,

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