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STATE OF ILLINOIS
SPRINGFIELD

January 31, 1980

FILE NO. S-1482

OFFICERS:
County Collector - Authority
to Pay Over Estimated Tax
Payment Receipts

Honorable Bernard Carey
State's Attorney
Cook County
Civil Division
Chicago Civic Center
Chicago, Illinois 60602

Dear Mr. Carey:

I have your letter wherein you inquire whether the county treasurer as county collector, is required by section 34B-8 of Public Act 81-1222 (to be codified at Ill. Rev. Stat., ch. 122, par. 34B-8) upon the appropriate request and direction of the taxing bodies involved, to deposit certain portions of the tax receipts from the estimated tax payments made in 1981 with a Debt Service Fund trustee appointed pursuant to the provisions of the Act. You enclosed with your request a copy of an opinion you

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issued to Mr. Edward J. Rosewell, Treasurer and County Collector of Cook County, in which you advised that he has a mandatory duty to pay estimated tax payment receipts directly to the trustee. I agree with your opinion.

Public Act 81-1222, effective January 16, 1980, provides that the city of Chicago may issue notes to provide financing for the Chicago Board of Education. When issuing such notes, the City Council, under the Act, is to levy taxes against the taxable property of the city without limitation as to rate or amount. The Board of Education's tax levy to be extended for a particular purpose and year is to be reduced by the amount of the levy for payment of notes which are issued for such purpose.

In addition, section 34B-8 of the Act provides in pertinent part:

"* * * The county collector of each county in which the City is located shall pay the proceeds of all taxes levied for the payment of the principal of and interest on the Notes upon receipt by the county collector directly to the Trustee to be held in trust in such Debt Service Fund for the benefit of the holders of the Notes. All such proceeds of such taxes shall be applied solely for the payment of principal of and interest on the Notes and shall not be used for any other purpose so long as any Notes remain outstanding. Any such levy shall be for the sole benefit of the holders of the Notes and such holders shall have a security interest in and lien upon all rights,

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claim and interests of the City arising pursuant to any such levy and all present and future proceeds of such levy until the principal of and interest on the Notes are paid in full."

Pursuant to a request of the Board of Education of the city, the City Council has adopted an ordinance authorizing the issuance of Special Obligation School Tax Anticipation Notes. That ordinance levies taxes to be extended in 1981 sufficient to pay the notes and calls for the Board's educational tax levy to be extended in 1981 to be correspondingly reduced. In addition, in order to implement the Act and the ordinance, the city, the Board, the trustee, the city treasurer, and the city treasurer as ex-officio treasurer of the Board, have entered into an agreement requesting and directing the collector to pay a portion of the first estimated tax collected for 1981 directly to the trustee.

The procedures established by the Act are specific ones to be used in a unique circumstance. The language of section 34B-8 is specific and clear in prescribing the immediate payment over to the trustee of funds for satisfaction of the Special Obligation School Tax Anticipation Notes. It uses the word "shall", which in this context is clearly mandatory. (People v. Abbott (1916), 274 Ill. 380, 388; Canal Commissioners v. Sanitary District (1900),

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184 Ill. 597, 604; People ex rel. Crowe v. Marshall (1931),
262 Ill. App. 128, 131-132.) In fulfilling his mandatory
duty, the collector is empowered to act in accordance with
the aforementioned agreement.

Very truly yours,

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