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May 31, 2001

OFFICIAL OPINION 2001-2

Treasurer Tim Berry
State Treasury of Indiana
Indiana State House
Indianapolis, Indiana 46204

RE: North Miami School Corporation & Indiana Intercept Statute

Dear Treasurer Berry:

In a letter dated February 8, 2001, you requested that the Attorney General provide you with an opinion in regard to the application of the state's intercept statute. Specifically, you posed the questions listed below.

I. Questions Presented

(1) Does the intercept mechanism in IC 20-5-4-10 apply to the instant case involving North Miami School Corporation, when it made lease payments to Center School Buildings, Inc. but Center Schools failed to make payments to Harris Bank, the assignee of the lease proceeds?

(2) What event must occur to trigger the treasurer to apply the intercept statute and does the statute provide for the payment of interest in the event of a default?

II. Brief Answers

- (1) No, the intercept statute does not apply because the school did not default in any debt service obligation. Harris Bank failed to provide notice to North Miami School Corporation that it had been assigned the proceeds of the lease and that payment was to be made to the bank. Harris Bank is estopped from collecting from North Miami because of the legal relationship of the parties, their course of dealings, and the fact that every lease payment was made to Center Schools.
- (2) The events that trigger the application of the intercept statute are (1) receipt of notice by the Treasurer of the State that a school corporation has defaulted in its payment of a debt service obligation and (2) the finding by the Treasurer that the school corporation actually defaulted on a debt service obligation. The intercept statute applies to the actual amount in default, plus any interest that accrues from the time that the amount should have been paid, in accordance with the time of the specific agreement in question.

III. Statement of Facts

On November 26, 1979, Ray Dunn, President of Center Schools, Inc. (hereinafter "Center Schools") entered into a Lease Agreement with North Miami School Corporation (hereinafter "North Miami") to construct a school building addition. The Agreement outlined Center School's duties as landlord and North Miami's duties as tenant. The Agreement provided for semi-annual installment payments of \$163,882.00 with an option to purchase the structure and the land at the end of the tenth year, provided that North Miami had not defaulted under the lease. North Miami also would receive a special warranty deed at the end of the lease term in February 2000, had it not exercised the option to purchase after the tenth year. Dunn and Fred Warner, President of North Miami at the time, signed the document. Harris Bank was not a party to the Agreement.

The Lease Agreement allowed Center Schools to assign the lease without approval from North Miami after the building was constructed. It provided that a default left uncured for 30 days would result in written notice from the landlord to correct the default. As per the terms of the lease, notice of any kind was to be delivered to the tenant, North Miami, at its Denver, Indiana office.

The lease was recorded on August 13, 1980 and again on June 15, 1981 when it was amended to state that the building had been completed. Ray Dunn and Maurice Musselman, President of North Miami at the time, signed the addendum. The addendum stated that the new lease term began March 1, 1981 and ended on February 28, 2000.

On March 1, 1981, Dunn, representing Center Schools, then entered into an agreement for a loan with Harris Bank to mortgage the North Miami project. Only Dunn and Harris Bank signed the Loan Agreement. North Miami was not a party to the Loan Agreement. The Loan Agreement outlines the relationship between Center Schools as the borrower and Harris Bank as the lender. It also states that North Miami is a lessee of the property and that to simplify collection of lease payments, Harris Bank should act as a collecting agent for Borrower with respect to unassigned portions of the lease rental payments. The document also refers to the Assignment of the Lease. North Miami, however, was not a party to the Loan Agreement. The document further provides that if North Miami and the borrower made all payments that a warranty deed would be transferred from Harris Bank to North Miami.

Counsel for the bank provided this office with one letter from Center Schools dated September 1, 1981, which directs North Miami to "make all payments to our favor at Harris Bank, 111 West Monroe Street, Chicago, Illinois 60603." Counsel argues that this letter constituted notice to North Miami of the assignment of the lease proceeds.

Center Schools continued to send semi-annual letters to North Miami to remind the school corporation to remit payments to Center Schools at the Gary address.

The Assignment, dated February 17, 1982 and recorded on the same date, states that in cases of default of which the lender has knowledge, the banker/lender shall endeavor to notify the borrower within 30 days. One instance of default is defined as failure of the borrower or lessee to make payments.

In addition to the Loan Agreement, the mortgage note, signed by Dunn for Center Schools, and Harris Bank, provides that on or before September 2000, Center Schools promises to pay to Harris Bank \$3,330,035.96 plus interest. Payments of \$163,882.00 were due twice per year beginning March 1, 1981. The lease between North Miami and Center Schools secured the note.

From the beginning of the lease, North Miami made every semi-annual payment to Center Schools at the address for Center Schools in Gary, Indiana. North Miami never made a payment to Harris Bank. North Miami provides supporting documentation to this effect, with records beginning in 1981.

Harris Bank did not notify North Miami that it had been assigned the rights as holder of the lease. Harris Bank also did not request that North Miami make payments to the bank. Instead, North Miami made payments to Center Schools, and Center Schools continued to make semi-annual payments to the bank.

Dunn allegedly took the last two payments made by North Miami. Harris Bank states that it never received the payments. North Miami, however, made the last two payments, as documented by North Miami, in the manner in which it had made all of the other

payments from 1981 until the last payment. North Miami made the semi-annual payments to Center Schools at the Gary office.

When it did not receive the first of the last two payments in March and September of 2000, Harris Bank notified Center Schools and Dunn that it had not received the payment. Dunn, in turn, wrote the bank a letter stating that he would send the payments. Harris Bank did not, however, notify North Miami that the first of the last two payments had not been received. Only after Harris Bank did not receive the last two payments did North Miami become aware that the bank had not received the payments.

Counsel for Harris Bank states that under the documents, Harris Bank was not permitted to formally declare a default until 180 days had passed from the date that the last check was due. Counsel states that its earliest opportunity to do so was September 2000. It then notified Dune and other parties, counsel stated in a letter to this office. Counsel does not state that it notified North Miami, nor has Counsel for Harris Bank produced any document showing notice to North Miami.

Harris Bank now requests that the State Treasury apply the state intercept statute and make both of the last two payments to the bank that were allegedly taken by Dunn. Counsel states that the facts of the case are identical to a case in which the intercept statute was applied involving Jay County School Corporation (hereinafter "Jay County"). The Attorney General notes that in the Jay County case, the mortgagee, Allstate, gave Jay County written notice of the assignment of the lease and that it required that lease payments to be made directly to Allstate. In addition, Jay County made the lease payments to Allstate for approximately 15 years. None of these facts are present in the instant case. The State Treasurer requests the opinion of the Office of the Attorney General on the questions presented in Section I.

IV. The Indiana Intercept Statute

Key to the discussion is the Indiana intercept statute. To answer the questions posed by State Treasurer Berry, the Attorney General must interpret Indiana Code 20-5-4-10.

The intercept statute under Indiana Code 20-5-4-10 states in its entirety:

(1) Prior to the end of each calendar year the state board of tax commissioners shall review the bond and lease rental levies, or any levies which replace such levies, of each school corporation, payable in the next succeeding year, and the appropriations from such levies from which the school corporation is to pay the amount, if any, of principal and interest on its general obligation bonds and of its

lease rentals under IC 21-5-11 through IC 21-5-12, during such succeeding year (such amounts being referred to in this section as its "debt service obligations') In the event that such levies and appropriations of the school corporation are not sufficient to pay the debt service obligations, the state board shall establish for each school corporation bond and lease, rental levies, or any levies which replace such levies and appropriations which are sufficient to pay such debt service obligations.

(2) Upon the failure of any school corporation to pay any of its debt service obligations during any calendar year when due, the treasurer of state upon being notified of such failure by any claimant shall make such payment from the funds of the state to the extent, but not in excess, of any amounts appropriated by the general assembly for the calendar year for distribution to such school corporation from state funds, deducting such payment from such amounts thus appropriated such deducting being made, first from property tax relief funds to the extent thereof, second from all other funds except tuition support and third from tuition support.

(3) This section shall be interpreted liberally so that the state of Indiana shall to the extent legally valid ensure that the debt service obligations for each school corporation shall be paid, but nothing contained in this section shall be construed to create a debt of the state of Indiana

V. Discussion & Application of Law

Question 1: Does the intercept statute apply to this case?

As stated in the statute, the intercept statute must be applied liberally to the extent legally valid to all instances in which a school corporation defaults on its debt service obligations. Per the Indiana Code, the statute must be given its plain meaning, put into context and not given an outlandish meaning. *See IC 1-I-4-I, & U.S. vs. Hodgekins, US. Court of Appeals, 7th Circuit, 28 F. 3d 610, 613 (1994), State vs. Laporte Superior Ct #1 & Honorable Norman Sallwasser, Ind Supreme Court, 291 NE2d 355 (1973), Cox & McCall vs. Workers' Compensation Board of Ind., Ind Supreme Court, 675 NE 2d 1053 (1996), Sullivan vs. Day, Ind Supreme Court, 681 NE2d 713 (1997), 3551 Lafayette Road Corp, vs. Ind Dept. of Revenue, Ind Tax Court, 644 NE 2d 199 (1994).*

The key to the application of this statute is to determine if and when a school corporation is in default. Default is determined by examining the terms of the contractual documents and the actions of the parties. The only default claimed in this case is a failure to make a lease payment to the correct party. There is no dispute that North Miami made all of the required lease payments to Center Schools. Center Schools assigned the lease proceeds with North Miami to Harris Bank as part of the security given to the bank in its financing

of the property. Therefore, the question is whether North Miami paid the appropriate party, or as is the Jay County case, paid the wrong party.

Legal Relationships

(A) Lease & Secured Transaction

Based upon the documentary evidence presented, it is clear that Harris Bank and Center Schools had a mortgagor/mortgagee relationship, while Center Schools and North Miami had a lessor/lessee relationship. Harris Bank did not notify North Miami, however, that it had been assigned the lease proceeds and that North Miami should pay Harris Bank directly.

As also evidenced by the documents, Harris Bank has a security interest in the building and property leased to North Miami Schools. The property is collateral for the loan, although the lease takes priority over the loan because it was recorded first. Additionally, the lease was recorded prior to the mortgage, and was never subordinated to the mortgage. *See IC 26-1-9-312 & IC 16-1-9-316 & A-W-D Inc, vs. Salkeld Indiana App. Ct. 3rd District, 372 N. E 2d 486-489 (1978), In re Dupont Feed Mill & Rushville National Bank vs. Wells Fargo Bank, 121 B.R 555, 559, U. S. District Court, Southern District of Indiana (1990), & In re Our Own Hardward Co, Provident Bank & Tom's Home Center Inc., 194 B.R. 199, UD District Ct, SD Ind, (1996).*

The lease also appears to be a secured transaction and is governed by Article 26 of the Indiana Code. An agreement may be called a "lease" when characteristics of the lease are actually those of a secured transaction. *See Barwell, Inc. vs. First of American Bank, United States District Court, N.D. Indiana, 768 F. Supp. 1312 (1991), McEntire vs. Indiana National Bank, Ind App. Ct. 4th District, 471 NE 1d 1116 (1984), Morris vs. Lyons Capitol Resources, Inc., Indiana App. Ct 4th District, 510 NE 1d 121(1987).*

(B) Course of Dealings & Performance

In addition to the legal documents, one must look to the course of dealings of the parties as well to determine the nature of the contractual relationships. Course of dealings is pertinent to supplementing terms of the contract. *See IC 16-1-1-205 & 16-1-2.1-207, & Gibson County Farm Bureau Cooperative Association vs. Greet, Supreme Court of Indiana, 643 NE 2d 313, 320 (1994).*

The U. S. Court of Appeals for the 7th Circuit Court, in *Luedtke Engineering Co, Inc. vs. Indiana Limestone Co., Inc., 740 F.2d 598, 600 (1984)* upheld the district court's finding that evidence of prior dealings was admissible to help supplement the terms of a contract. In the *Luedtke case*, Luedtke Engineering Company argued that Indiana Limestone was required to supply cement for a specific price. The court found, however, that in accordance with Indiana Code 26-1-1-205, a different price had been established over the

companies' course of dealing over the years. For further discussion of course of dealings see also *Insurance Co. vs. Eggesion, US Supreme Ct, 96 U S 572 (1877)*.

Course of dealings is also an established doctrine that applies to leases. "If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement" (IC 26-1-2.1-102)

In applying the course of dealings doctrine to this case, it is clear that the system established for receiving rental payments under the lease consisted of North Miami sending the payment twice per year to Center Schools, which then sent the payment to Harris Bank. The documentary evidence demonstrates a relationship only between Harris Bank and Center Schools and then Center Schools and North Miami. North Miami was never a signatory to the documents that created the relationship between Center Schools and Harris Bank, and the conduct of the parties indicates further that the bank's relationship was only with Center Schools. Harris Bank did not give notice to North Miami that lease payments were to be made to Harris Bank. All parties relied upon this course of dealings. North Miami never deviated from this practice, and only Center Schools deviated from the practice when the last two payments were allegedly taken by Dunn. After the unilateral deviation of Center Schools, Harris Bank now attempts to use the intercept statute to obtain payment. Harris Bank now demands payment from North Miami contrary to the fact that the course of dealings dictated that payment was to be made by Center Schools and had always been accepted from Center Schools.

Duty of Harris Bank to Provide Notice to North Miami School Corporation

When it was assigned the lease proceeds in the Assignment of Lease in 1982, Harris Bank had a duty to exercise due diligence in notifying the lessee, North Miami, that Harris Bank had been assigned the lease. It also had a duty to notify North Miami that payments were to be made to Harris Bank by North Miami, if it wished to change the manner in which the bank received the payments. Indiana Code 26-1-1-201 requires that secured parties exercise "due diligence" in providing notifications to debtor parties Harris Bank did not, however, exercise due diligence in notifying North Miami in any manner.

The Indiana Code provides certain rights to assignees and debtors liable under an assignment contract alike. An account debtor, under the code, is authorized to pay the assignor until the account debtor receives notification that the amount due has been assigned and payment is to be made to assignee. (IC 26-1-9-502) In addition, Indiana Code 26-1-9-318 states that notification which does not reasonably identify the rights assigned is ineffective. (*See Hall Brothers Construction, Inc., vs. Mercantile National Bank of Indiana, Court of Appeals, 5th District, 642 NE 2d 285 (1994)*).

The Indiana Supreme Court discussed the notice requirement of IC 26-1-9-318 and

IC 26-1-1-201 in *Ertel vs. Radio Corp. of America*. In that case the court found that notice delivered to an account debtor's employee was sufficient notice of the assignment. The employee failed to forward the notice to the accounting department. *Ertel vs. Radio Corp. of America*, Ind Supreme Court, 307 NE 1d 471(1974).

The facts of that case are different from the case at bar. In that case, the assignee took the affirmative step of sending a notification to the debtor. It also included with the notification of assignment a demand letter that the debtor make payments from that point forward to the assignee. In this case, Harris Bank did not notify North Miami of the assignment, nor did it make a demand that payment be made to Harris Bank. Indiana Code 26-1-1-201 (26) & (27) define "notice" and notification for purposes of the Uniform Commercial Code on secured transactions as follows.

IC 26-1-1-201 (26)

"A person 'notifies' or 'gives' notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person 'receives' a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

IC 26-1-1-201 (27)

(27) Notice, knowledge, or a notice of notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and in any event, from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information. "

Notice may be actual or constructive. In this case, North Miami received neither. Constructive notice is a legal inference from established facts. Actual notice "is extended to embrace all degrees and grades of evidence from the most directive and positive proof to the slightest circumstance from which a court or jury would be justified in inferring notice." *Willard v. Bringolf* 5 NE 2d 315, 321, *Indiana Appeals Court*, (1936).

The rights of an assignee are subject to the terms of the contract, as are its duties. (IC 16-1-9-318). Although Harris Bank had the right to demand direct payment from North Miami, it also had a duty to exercise due diligence in notifying North Miami of a change in the party to which payments were to be made. See IC 32-8-11-7, IC 26-1-9-318, IC 16-1-9-502, and for interpretation of identical Illinois provision in regard to duty of assignee to notes debtor *see Kent Meters vs. Emco of Illinois, US District Ct, ND Ill., Eastern Division*, 768 F. Sapp. 242 (1991), *First Trust & Savings Bank of Glenview vs. Skokie Federal Savings & Loan, Ill. App. Ct. 1st District*, 466 NE 2d 1048 (1984). Harris Bank attempts to assert that it was assigned the rights that previously belonged to Center Schools. It must, however, exercise those rights with due diligence.

Counsel for Harris Bank provided this office with one letter from Dunn to Larry Polk, superintendent of North Miami at the time, dated September 1, 1981. Counsel argues that the letter provides notice to North Miami that Harris Bank had been assigned the lease and that payments were to be made to the order of Harris Bank. The letter states the following:

Dear Mr. Polk:

The undersigned corporation is the Owner & Landlord of that certain school building which you have leased from Center, Schools Buildings, Inc., which Lease is dated November 26, 1979. From this point on, make all lease rental payments to our favor at the Harris Trust and Savings Bank, 111 West Monroe Street, Chicago, Illinois, 60690.

Yours Very Truly,

Center School Buildings, Inc.
Ray E. Dunn

This argument is not persuasive. The letter from Ray Dunn merely directs North Miami to make payments to the credit of Center Schools at the Harris Bank location. While North Miami states that it does not believe it ever received the letter, the letter does not indicate that Harris Bank has been assigned the lease proceeds, nor does it indicate that payments are to be made for the benefit of Harris Bank. This letter, if received, does not constitute either actual or constructive notice of assignment of the lease to Harris Bank. It also does not require that North Miami pay Harris Bank instead of Center Schools.

In addition to the fact that the letter does not provide North Miami with notice that the lease proceeds had been assigned, Center Schools sent North Miami a letter twice per year, in advance of the semi-annual payment date, to remind the school corporation to remit its payment to Center Schools.

Per IC 26-19-502 states that in an event of default, a secured party is entitled to notify an account debtor or obligor to make payment to the secured party. North Miami did not default, however, because Harris Bank did not notify North Miami of the assignment, nor did Harris Bank notify North Miami that payment should be made to the bank.

Counsel also attempts to place emphasis in its letter to this office dated April 6, 2001, on the fact that Harris Bank could not formally declare default until 180 days had passed since the missed payment. The notification of default, however, is a different issue from notification of the assignment of the lease proceeds and actual default under the Lease Agreement. Moreover, Harris Bank never sent notice to North Miami regarding the first missed payment when the second payment was not due for 180 days. Harris Bank could have alerted North Miami of the missed payment prior to the date of the second payment, but chose not to do so.

Estoppel

Based upon the relationship established by the documents and the course of dealings of the parties, Harris Bank is estopped from successfully claiming that North Miami failed to make a debt service payment. Under the doctrine of equitable estoppel, Harris Bank is estopped from collecting the last two payments from North Miami. Harris Bank had a duty to give notice of the assignment and direction to pay Harris Bank and it did not, therefore, it is estopped from asserting a claim thereunder. The principle of estoppel supplements the provisions of secured transactions in IC 26-1. (*IC 16-1-1-103*). For discussion of estoppel see *Phar-Crest Land Corporation vs. Therber, Indiana Supreme Court, 144 NE 1d 644 (1969)* & *AAA Wrecking Co., Inc. vs. Barton, Curie & McLaren, Inc., Court of Appeals, 4th District (1979)*.

There are various types of estoppel under the law, all of which are defensive mechanisms with purposes of preserving the rights of a party who relied upon the actions of another party, resulting in detriment to the relying party. There are two types of equitable estoppel. The first involves the use of fraud or misrepresentation against a party who relies upon the misrepresentation. The second type, which applies as far as Harris Bank is concerned in this case, is created when one party with a duty to act fails to do so. See *Bowes vs. Lambert, 51 NE 1d 83, Indiana Appeals Court, (1943)*. This latter type of estoppel arises when the party with the duty to act remains silent when it has a duty to act. Negligence can be the basis of estoppel. *Associates Investment Co. v. Shelton, 105 NE 2d 354, Indiana Appeals Court, (1951.)*

The Indiana Supreme Court discussed estoppel in *Brand vs. Monumental Life Insurance*, when the course of dealing leads an individual or entity to rely upon the course conduct

of another person or entity. *Brand vs. Monumental Life Insurance, Indiana Supreme Court, 417 NE 2d 297 (1981)*. In that case, an insurance company endeavored to foreclose on an Oddfellows organization due to the receipt of late payments due on an insurance policy. The insurance company stated to the Oddfellows organization that it would accept late payments up to 10 days after the due date. In fact, however, the company routinely accepted payments as late as 60 days after the receipt of notice that the payment was due and did not cancel the agreement or attempt to declare a forfeiture. This course of conduct continued for two years. The Court held that the insurance company was estopped from taking any action against the defendant when the company led the plaintiff to believe that premiums would be accepted after the day designated in the contract. *See also Painter vs. Industrial Life Association, Indiana Supreme Court, 30 NE 876 (1892)*.

In *Brand*, the plaintiff engaged in the course of conduct for two years. In the case at bar, however, the course of conduct continued from the date that the lease was assigned nearly 20 years. Harris Bank is estopped in this case from claiming that they defaulted on a debt service obligation by failing to make payments directly to the bank.

As a result, Harris Bank is also unable to demand payment through the intercept statute. The state is only liable under the intercept statute if a school corporation is in default under its legal obligations. The state, in effect, stands in for the school corporation when it can not or does not make a debt service payment. Thus, the state is not liable for a debt that is not owed by a school corporation.

Jay County School Corporation Case

While this office may have correctly interpreted the intercept statute in the Jay County case, the facts of that situation are different from the instant case. In that case, Southern, School Buildings Inc. (hereinafter "Southern Schools"), another corporation for which Ray Dunn served as the president, contracted with Jay County to build a new high school. The construction was completed and the property was leased back to Jay County in 1975. Southern assigned its rights and duties as landlord at that time to the Guardian Life Insurance Company, which in turn sold its interest to Allstate in 1980. Allstate notified Jay County that it had been assigned the lease and to make payments to Allstate. Jay County made its lease payments directly to Allstate from 1980 until 1995. After consistently making lease payments to the same party for 15 years, it suddenly and mistakenly began to make them to Southern Schools instead of Allstate. Southern Schools passed the payments along until 1998. In January of 2000, Allstate notified the State Treasury that it had not received payments from Jay County or Southern Schools in 1998 or 1999.

The difference between the Jay case, then, and North Miami is clear. Jay County officials made a critical error in mistakenly sending the payments to Southern Schools. Jay County officials had been given notice that Jay County was liable under the lease directly to Allstate and accordingly made payments to Allstate for 15 years. This office

found that Jay County failed to pay the correct party and advised that the intercept statute should apply.

Liberal Interpretation of intercept Statute

The Indiana Intercept Statute must be interpreted liberally. Liberal interpretation requires that any entity interpreting its language must give the statute a broad reading. *See Dept. of Treasury vs. Dietzer's Est., 21 NE 2d 137 (1939, Tennant vs. Tennant, 15 BR 502, US Bankruptcy Court, N.D. Indiana, Hammond Division, (1981).*

When a school corporation actually defaults on a debt service payment, the statute must be applied. The intercept statute is designed to insure that holders of debt service obligations are paid by the state when a school corporation fails to make debt service payments after proper notice of its payment obligation.

The statute is not designed to protect holders of school debt service obligations from their own negligence or the fraud of third parties. To interpret the statute otherwise would open the door to using the state treasury, our citizen's own tax dollars, as an insurance policy against the negligence of the debt holder or against any type of fraudulent situation such as embezzlement by a bank employee receiving the debt service payment. The intercept statute does not protect parties against their own negligence or lack of due diligence in executing contractual obligations.

The statute should be applied liberally, but only when a school corporation is in actual default on a debt service payment.

What triggering event must occur for the Treasury to apply the intercept statute

When the Treasurer has actual notice that a default has in fact occurred, the intercept statute should be applied to the amount of default plus any interest that accrued under the specific contract obligation. The triggering event is notice and investigation of actual default under the law. Because the state substitutes itself for the school corporation in making debt service payments, the state is liable only when a school corporation is liable. The intercept statute is triggered upon the receipt by the Treasurer of notice of a valid default. The application of the statute must involve a process to determine whether a default has occurred.

Conclusion

The intercept statute does not apply to this case because North Miami was not in default on a debt service obligation. North Miami properly made the lease payment to the party named on the lease agreement. Center Schools had the right per the terms of the lease to assign the lease and the receipt of lease proceeds after the building was complete. Harris Bank had the right as assignee to receive the lease proceeds. Harris Bank, however, also had the duty to inform North Miami if it wished to change a course of dealing that had been established and followed from the inception of the lease until the last payment was

made is 2000. It had the duty to notify North Miami of its intention to require that all lease payments be made directly to Harris Bank. It failed to do so.

To apply the intercept statute in a blanket fashion, regardless of whether the school corporation was actually in default of an obligation, would be inconsistent with the purpose of the statute. The purpose of the statute is to insure holders of school debt service obligations that the state will intercept and make payments when a school corporation is in actual default on these obligations.

Sincerely,

Stephen Carter
Indiana Attorney General