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SPRINGFIELD

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FILE NO. S-1060

APPROPRIATIONS:

Employees of Division of Vocational
and Technical Education are Entitled
to Salary Increase Provided in
Public Act 78-1254

Dorothy Grant Arndt
Chairman
Board of Vocational Education
and Rehabilitation
1330 26th Avenue
Rock Island, Illinois 61201

Dear Chairman Arndt:

I have your letter in which you ask whether the
employees of the Division of Vocational and Technical
Education are entitled to the salary increase provided
for in "AN ACT to provide salary increases for certain
State employees". (P.A. 78-1254, H.B. 2851.) Public Act
78-1254, which became effective December 4, 1974, (People

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ex rel. American Federation of State, County and Municipal

Employees v. Walker, 61 Ill. 2d 112) provided a salary

increase of \$100 per month for all State employees.

"* * * [E]xcept prevailing wage, negotiated rate, employees under special payroll plans included in the respective appropriation Acts, employees of the Secretary of State, Attorney General, Comptroller, Treasurer, Lieutenant Governor, Superintendent of Public Instruction and the State universities and any employee whose salary is fixed by statute." (emphasis added.)

As you state in your letter, the answer to your question depends on whether the employees of the Division of Vocational and Technical Education were employed by the Board of Vocational Education and Rehabilitation or by the Office of the Superintendent of Public Instruction when the increase became effective.

The statutory provisions concerning the Board of Vocational Education and Rehabilitation and the Division of Vocational and Technical Education are set forth in "AN ACT in relation to vocational education and vocational rehabilitation of disabled persons". (Ill. Rev. Stat. 1973, ch. 122, pars. 694 - 698.) Although section 2 of the Act

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established the Board of Vocational Education and Rehabilitation "in the Office of the Superintendent of Public Instruction", the Board was clearly not under the control of the Office of the Superintendent of Public Instruction. The Board, which was not within the Office of the Superintendent of Public Instruction from the time of its creation in 1919 until 1951, received its own appropriation, at least in fiscal years 1974 and 1975, directly from the General Assembly and not through the Office of the Superintendent of Public Instruction. (P.A. 78-115; P.A. 78-1093.) Furthermore, the Board was composed almost entirely of appointees of the Governor. Section 2 (Ill. Rev. Stat. 1974 Supp., ch. 122, par. 695) provides in relevant part:

"* * * The Board shall consist of the Director of Registration and Education, the Superintendent of Public Instruction, the Director of Agriculture, the Director of Children and Family Services, the Director of Labor, the Director of Mental Health and Developmental Disabilities, the Director of Public Health, and 6 members to be appointed by the Governor.

The Governor shall designate the chairman of the Board. * * *

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In addition to the six members appointed directly to the Board by the Governor, each of the directors sitting on the Board was appointed to his directorship by the Governor with the advice and consent of the Senate. (Ill. Rev. Stat. 1974 Supp., ch. 127, pars. 4 and 12.) The only member not appointed by the Governor was the Superintendent of Public Instruction. Thus, all but one member of the 13 member Board, including the chairman, were selected by the Governor. The Superintendent of Public Instruction was just one member of the Board, having no greater control over the Board than any other member. The Board of Vocational Education and Rehabilitation was thus neither under the financial control of nor subject to direction by the Office of the Superintendent of Public Instruction.

The determination that the Board was independent of the Office of the Superintendent of Public Instruction both financially and structurally makes it clear that the employees of the Division of Vocational and Technical Education were employees of the Board and not of the Office of the Super-

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intendent of Public Instruction. Section 4 of the Act (Ill. Rev. Stat. 1973, ch. 122, par. 697) provides in relevant part:

"The Board shall have power and it shall be its duty:

* * *

(d) Upon the recommendation of the executive officer for vocational and technical education to appoint, without reference to any civil service law which is now or which hereafter may be in force in this State, a Director of Vocational and Technical Education and such professional and technical assistants as may be necessary in his division and to prescribe their duties, compensation and terms of employment;

(e) Upon the recommendation of the executive officer for Vocational and Technical Education to appoint, without reference to the provisions of any civil service law which is now or which hereafter may be in force in this State, such clerks and stenographers and other employees as may be necessary in his division and to prescribe their duties, compensation and terms of employment;

* * *

Although the Superintendent of Public Instruction was the executive officer for vocational and technical education, upon whose recommendation employees were appointed, the Board had the power to make the appointments and prescribe the duties, compensation and terms of employment. Not only

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did the Board appoint and prescribe the compensation for the employees of the Division of Vocational and Technical Education; those employees were actually paid out of funds appropriated directly to the Board by the General Assembly. P.A. 78-115, sec. 1 and P.A. 78-1093, sec. 1.

The fact that vouchers for warrants to pay the salaries of these employees may have been certified by the Superintendent of Public Instruction does not indicate that these employees were employees of the Office of the Superintendent of Public Instruction. Vouchers for warrants drawn against appropriations to the Board of Vocational Education and Rehabilitation were required to be certified by the chairman and the secretary or by the executive officer of the Board and approved by the Department of Finance. (Ill. Rev. Stat. 1973, ch. 127, par. 146(14).) Any vouchers for warrants to pay salaries of employees of the Division of Vocational and Technical Education certified by the Superintendent of Public Instruction were certified under this provision by virtue of his position of executive officer of the Board for vocational and technical education and would also

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have had to be approved by the Department of Finance.

In summary, the employees of the Division of Vocational and Technical Education were appointed by, had their salary prescribed by and were paid by appropriations to the Board of Vocational Education and Rehabilitation, which was a board financially and structurally separate from the Office of the Superintendent of Public Instruction. Therefore, it is my opinion that the employees of the Division of Vocational and Technical Education were employees of the Board of Vocational Education and Rehabilitation and not of the Office of the Superintendent of Public Instruction at the time the salary increase became effective. It follows that those employees were not excluded from the salary increase provided by Public Act 78-1254 and are, therefore, entitled to the salary increase.

In writing this opinion I am aware of the existence of "AN ACT to repeal Sections 2 and 3 and to amend and renumber Sections 4 and 5 and amend the title of 'An Act in relation to vocational education and vocational rehabilitation of disabled persons', approved March 6, 1919, as amended, and to

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create the Board of Vocational Rehabilitation and define its powers and duties". (P.A. 79-1175.) The effective date of that Act, however, was subsequent to the situation with which this opinion deals, and the Act therefore has no application to this situation.

Very truly yours,

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