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September 13, 1984

FILE NO. 84-016

SCHOOL AND SCHOOL DISTRICTS:
Joint Agreement Special
Education Cooperatives

Honorable Ted E. Leverenz
Illinois State Representative
11 Stratton Building
Springfield, Illinois 62706

Dear Representative Leverenz:

I have your letter wherein you inquire whether special education "cooperatives", which consist of two or more school districts which have entered into a joint agreement to provide special education services and facilities pursuant to section 10-22.31 of The School Code (Ill. Rev. Stat. 1983, ch. 122, par. 10-22.31), may combine with other special education cooperatives to form "regional" or "umbrella" special education agencies. For the reasons hereinafter stated, it is my opinion

Honorable Ted E. Leverenz - 2.

that special education cooperatives established through joint agreements are without power to join together to form umbrella special education agencies, and any such agency established in the absence of statutory authority has no legal existence.

Section 10-22.31 of The School Code provides that school boards shall have the power:

"* * * To enter into joint agreements with other school boards to provide the needed special educational facilities and to employ a director and other professional workers as defined in Section 14-1.10 and to establish facilities as defined in Section 14-1.08 for the types of children described in Sections 14-1.02 through 14-1.07. The director and other professional workers may be employed by one district which shall be reimbursed on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. Such agreement shall provide that any full-time school psychologist who is employed by a joint agreement program and spends over 50% of his or her time in one school district shall not be required to work a different teaching schedule than the other school psychologists in that district. Such agreement shall be executed on forms provided by the State Board of Education and shall include, but not be limited to, provisions for administration, staff, programs, financing, housing, transportation and advisory body and provide for the withdrawal of districts from the joint agreement by petition to the regional board of school trustees. * * *

To either (1) designate an administrative district to act as fiscal and legal agent for the districts that are parties to the joint agreement, or (2) designate a governing board composed of one member of the school board of each cooperating district and designated by such boards to act in accordance with the joint agreement.

Honorable Ted E. Leverenz - 3.

No such governing board may levy taxes and no such governing board may incur any indebtedness except within an annual budget for the joint agreement approved by the governing board and by the boards of at least a majority of the co-operating school districts or a number of districts greater than a majority if required by the joint agreement."

Section 14-1.08 of The School Code (Ill. Rev. Stat. 1983, ch. 122, par. 14-1.08) provides:

"Special educational facilities and services. 'Special educational facilities and services' includes special schools, special classes, special housing, including residential facilities, special instruction, special reader service, braillists and typists for visually handicapped children, sign language interpreters, transportation, maintenance, instructional material, therapy, professional consultant services, medical services only for diagnostic and evaluation purposes provided by a physician licensed to practice medicine in all its branches to determine a child's need for special education and related services, psychological services, school social worker services, special administrative services, salaries of all required special personnel, and other special educational services, including special equipment for use in the classroom, required by the child because of his disability if such services or special equipment are approved by the State Superintendent of Education and the child is eligible therefor under this Article and the regulations of the State Board of Education."

Section 10-22.31 of The School Code is intended to allow co-operatives to be formed for the purpose of alleviating the financial burden borne by individual school districts with respect to furnishing special education services by pooling

Honorable Ted E. Leverenz - 4.

special education resources among the participating districts. See Evans v. Board of Education of Murphysboro (1980), 85 Ill. App. 3d 436, 437.

You state that approximately ten "regional" or "umbrella" special education associations have been formed, which are composed of groups of special education cooperatives established pursuant to section 10-22.31 of The School Code. Apparently, some of the regional associations have acted as administrators of funds for their member cooperatives and individual school districts, and have submitted applications for reimbursement of special education expenses provided under section 14-13.01 of The School Code (Ill. Rev. Stat. 1983, ch. 122, par. 14-13.01).

Article VII, section 8 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VII, § 8) provides in part:

"Townships, school districts[,] special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law.

* * *

School districts derive their existence and powers wholly from the General Assembly and possess no inherent powers. (People ex rel. Dilks v. Board of Education (1936), 283 Ill. App. 378, 388.) The powers of school districts must be strictly construed, and any doubt concerning the existence of a power must

Honorable Ted E. Leverenz - 5.

be resolved against the school district and its existence denied. 1945 Ill. Att'y Gen. Op. 120, 123.

Section 10-22.31 of The School Code authorizes school boards to form joint agreement cooperatives to assist in the furnishing of special education facilities and services to member school districts. Nothing in that section, however, purports to grant to the administrators of a joint agreement cooperative powers, such as the power to authorize the congregation of several special education cooperatives into a "regional" or "umbrella" agency. Joint agreement cooperatives are not school districts. Since the authority to associate granted by section 10-22.31 of The School Code is a power granted solely to school boards, the administrators of a joint agreement cooperative may not rely on its provisions to form an entity distinct and separate from the cooperative. Therefore, it is my opinion that special education cooperatives established by joint agreements between school boards are without power to form "regional" or "umbrella" special education agencies, and any such agency formed in the absence of statutory authority has no legal existence.

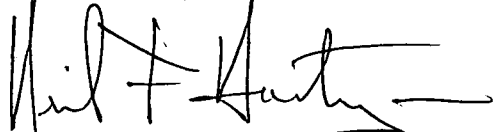
It should be noted that the formation of special education cooperatives, being expressly authorized and governed by the provisions of The School Code, is not subject to the

Honorable Ted E. Leverenz - 6.

provisions of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1983, ch. 127, par. 741 et seq.). Because your question is limited to the powers of such cooperatives, I express no opinion as to the powers of entities created pursuant to the latter Act.

You have also inquired concerning the propriety of certain financial transactions between "regional" associations and joint agreement special education cooperatives. Because of the conclusions expressed above, I believe that it is necessary only to state that in the absence of statutory authority otherwise providing, any use of a regional association as a financial administrator for special education cooperatives or any expenditure of funds for the support of a regional association would be improper.

Very truly yours,


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