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COPY

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CONSTITUTION OF 1970:
Effective date of legislation
Public Act 77-1681 setting minimum
salaries for teachers.

Honorable Michael J. Bakalis
Superintendent of Public Instruction
State of Illinois
302 State Office Building
Springfield, Illinois 62706

Dear Superintendent Bakalis:

I have your recent letter in which you raise certain questions involving Public Act 77-1681, which increased minimum salaries paid full-time teachers in Illinois public schools. House Bill 1516, which ultimately was enacted as Public Act 77-1681, was passed by the House on June 11, 1971, and by the Senate on June 30, 1971. On September 27, 1971, the Governor filed with the Secretary of State specific recommendations for

change in accordance with paragraph (e) of Section 9 of Article IV of the Constitution of 1970. On October 5, 1971, the Secretary of State forwarded the Governor's recommendations to the reconvened House of Representatives where they were entered in the House Journal (H.J., October 5, 1971, 60-61). Motions to accept the Governor's recommendations were approved by the House on October 13, 1971, and by the Senate on October 27, 1971, all in accordance with constitutional procedure. The Governor certified on November 17, 1971 that the acceptance by both Houses conformed with his recommendation.

The specific questions which you raise are as follows:

"1) Was House Bill 1516 passed prior to July 1, 1971, or by its return to the Legislature by the Governor was the bill not passed until October 27, 1971?

2) Based on the answer to the above what should be considered the effective date of P. A. 77-1681?

3) If the effective date is other than July 1, 1971, is it possible to make it applicable retroactively to that date or would such action be an impairment of contract under Article 1, Section 16 of the 1970 Illinois Constitution?

4) What is the effective date for the amendment to Section 24-8 of the School Code expanding

previous public school experience to experience:

> '. . . in this State or any other State, territory, dependency or possession of the United States, or in schools operated by or under the auspices of the United States . . .'"

House Bill 1516, in the form finally approved by the Governor, provides in relevant part as follows:

> "Section 1. Section 24-8 of 'The School Code', approved March 18, 1961, as amended, is amended to read as follows:
>
> Sec. 24-8. Minimum Salary. In fixing the salaries of teachers, school boards shall pay those who serve on a full-time basis not less than a rate for the school year that is based upon training completed in a recognized institution of higher learning, as follows: for the school year beginning July 1, ~~1967~~ 1971 and thereafter, less than a bachelor's degree, $6,000 ~~$5,000~~; 120 semester hours or more and a bachelor's degree; $6800 ~~$5600~~; 150 semester hours or more and a master's degree, $7300 ~~$6000~~. * * *
>
> Effective July 1, 1969, and based upon previous public school experience in this State or any other State, territory, dependency or possession of the United States, or in schools operated by or under the auspices of the United States, teachers who serve on a full-time basis shall have their salaries increased to at least the following amounts above the starting salary for a teacher in such district in the same classification: * * *

> Section 2. This amendatory Act of 1971 shall be subject to Executive Order 11615, dated August 15, 1971, as issued by the President of the United States to stabilize prices, rents, wages and salaries, together with any modification or extension thereof by or pursuant to Federal law."

Additions to Section 24-8 are indicated by underlining and deletions by crossing-out. The changes recommended by the Governor in his "amendatory veto" reduced the minimum salary figures from those in the Bill as originally passed and added Section 2, subjecting the provisions of the Bill to "wage-price freeze" established by Executive Order No. 11615 (House Journal, Oct. 5, 1971, pp. 60, 61).

There are two provisions of the Illinois Constitution of 1970 which are relevant to the questions you raise. Section 9(e), Article IV of the Illinois Constitution of 1970 provides as follows:

> "(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he

> certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

Section 10, Article IV of the Illinois Constitution of 1970 provides as follows:

> "The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date."

In Board of Education v. Morgan, 316 Ill. 143 (1925) our Supreme Court pointed out that a legislative enactment cannot become law until the entire legislative process has been completed:

> "A proposed act of the General Assembly, upon its introduction in either house, is called a bill, and during its progress through the two houses, with its various readings, references and amendments, it remains a bill,--a house bill or a senate bill, as the case may be,--but when it has finally passed both houses it has become an act of the General Assembly, though before it becomes a law it requires the approval of the Governor, who may by his

> veto require its reconsideration by the General Assembly, and it cannot take effect until the first day of July next after its passage except in case of emergency, as provided in section 13. It may, however, become a law before the first day of July, for section 16 of article 5 provides that every bill passed by the General Assembly shall, before it becomes law, be presented to the Governor, and if he approve he shall sign it, and thereupon it shall become a law. A bill as soon as signed by the Governor becomes a law, but it does not become effective until the first day of July following its passage. * * * Both requirements must be met before the act takes effect,--the coming of the first day of July and the approval of the Governor,--and it is immaterial which comes first. When the two things combine then the act takes effect."
>
> 316 Ill. 143, 149.

While Morgan deals with the 1870 Constitution the principles there enunciated seem applicable with equal force under the present Constitution.

The only case which has dealt with the question of the effect of the "amendatory veto" upon the rules governing the enactment and effective date of a law as set forth in the Morgan case is People ex rel. Klinger v. Howlett, 50 Ill. 2d 242 (1972). In that case the Supreme Court held that, at least in situations where the Governor's recommended changes are

substantive in nature and not merely technical corrections, a Bill cannot be considered "passed" until the General Assembly has approved those changes. In so ruling, the Court stated:

> "In the present situation the last act of the legislature which permitted the Governor to make the bills become law by his acceptance was the vote of the houses of the General Assembly which approved the Governor's changes in the bills. For the purpose of section 10 of article IV, these bills were 'passed' on October 28, 1971, when the House voted to accept the Governor's executive amendment after the Senate had already done so. Any other definition of the word 'passed' which fixed an earlier time would require this court to rule that the bills were passed before the legislature ever considered them in their final form, indeed before they were written. Nothing in the constitution of 1970 suggested that the word 'passed' was used in such an artificial and abnormal sense."
>
> 50 Ill. 2d 242, 247-8.

In the course of its opinion in Klinger, the Court mentioned House Bill 3032, which added Section 6 to "An Act to revise the law in relation to the construction of the statutes." In relevant part, this statute reads as follows:

> "§ 6. * * * However, for the purpose of determining the effective date of laws under Section 10 of Article IV of the Constitution of 1970 and 'An Act in relation to the effective date of laws', approved July 2, 1971, a

> bill is 'passed' at the time of its final legislative action before presentation to the Governor as provided in paragraph (a) of Section 9 of Article IV of the Constitution of 1970.
> * * *"
>
> Ill. Rev. Stat. 1971, ch. 131, par. 4.2, as amended by P.A. 77-1848.

While this statute was before the Court, it was held inapplicable since it was not certified by the Governor until after his certification of the Acts which were under consideration. The language of our Supreme Court in Klinger, quoted above, is such that it appears highly doubtful that the Court would hold Section 6 of "An Act to revise the law in relation to the constructions of the statutes" to be valid in any situation where the changes recommended by the Governor were anything other than of a minor, technical nature. As the Court pointed out, "Any other definition of the word 'passed' which fixed an earlier time would require this court to rule that the bills were passed before the legislature ever considered them in their final form, indeed before they were written."

Based upon the above considerations, it is my opinion that House Bill 1516 was passed on October 27, 1971, and became

law on November 17, 1971 in accordance with the provisions of paragraph (e) of Section 9 of Article IV of the Constitution of 1970.

With respect to your second question, dealing with the effective date of the Public Act 77-1681, Section 10, Article IV of the Illinois Constitution of 1970, quoted above, is clear that, where the Act was not passed until after June 30, 1971, while becoming law on November 17, 1971, it would not become effective until July 1, 1972, unless the General Assembly provided for an earlier effective date and the bills received a three-fifths majority. Since the Bill did receive the vote of three-fifths or more of the members of each House, the question is therefore one of whether an earlier effective date is provided.

In the final enrolled and engrossed Bill which was presented to the Governor, the amendatory language is in the following form: "for the school year beginning July 1, ~~1967~~ 1971, and thereafter, * * *." It is this language that must be relied upon if an effective date earlier than July 1, 1972, is to be determined. In this connection, it must be remembered that the Act as finally approved contained minimum salary levels

substantially lower than those in the bill as originally proposed and, in addition, the Act was made subject to the provisions of the "wage-price freeze" in effect during the latter part of 1971. Furthermore, final action on the Bill by the General Assembly was not completed until late October, long after contracts for the 1971-72 academic year had been made and the school year begun.

In the debates in the 1970 Constitutional Convention, two reasons were articulated for providing an effective date for bills passed by the General Assembly:

> "The effective date purpose, of course, as Delegate Elward has said, is for the public to know in advance the law that is applicable to them before it becomes effective."
>
> 6th Constitutional Convention,
> Verbatim Transcript, No. 89,
> July 21, 1970, p. 222.

> "The General Assembly should make an informed judgment that this particular bill should become effective sooner and presumably have a reason for so doing. * * *"
>
> 6th Constitutional Convention,
> Verbatim Transcript, No. 89,
> July 21, 1970, p. 221.

Further, in amending its rules to conform to the provisions of the Constitution of 1970, the House of Representatives left in

effect the former provisions for an emergency clause required by the Constitution of 1870. As amended on October 13, 1971, House Rule No. 51 provides:

> "51. When an emergency is expressed in the preamble or body of an Act, as a reason why such Act should take effect prior to the first day of July, next after its passage, and when such an Act contains a clause or proviso fixing such time prior to the first day of July, the question shall be, 'Shall the bill pass?' and if decided affirmatively by a vote of three-fifths of the members elected to the House, then the bill shall be deemed passed; and if, upon such vote a majority of said members elected, but less than three-fifths thereof, vote affirmatively on said question, then the vote on said bill shall be deemed reconsidered and the bill subject to amendment by striking out such part thereof as expresses an emergency and the time of taking effect, and then said bill shall be under consideration upon its third reading, with the emergency clause and time of taking effect stricken out; provided, however, that such amendment, striking out the emergency clause shall be printed and placed on the desks of the members before said bill is again considered upon third reading." House Journal, October 13, 1971, p. 6.

It may be argued that the reference in the Act to the President's Executive Order No. 11615 implies an intent that the Act become effective not later than the date upon which it became law. However, it must be remembered that at

the time the Governor's recommended changes were before the General Assembly, there was no assurance as to what sort of controls on prices, rents, wages and salaries would follow the expiration of the "freeze" on November 15, 1971. Thus, increasing minimum salaries in excess of 20%, might be in violation of whatever continuing controls would exist, and, whatever the effective date of the Act, certain Federal actions might be considered to render impossible the implementation of the increases by the local school boards.

As originally contemplated by the sponsors of this legislation, it might be expected that the Act would become effective on July 1, 1971, or when the Governor approved it, which would be within a reasonable time thereafter. The exercise of the "amendatory veto," by substantially extending the legislative process, made this assumption incorrect. The fact that the Act merely altered an outdated reference contained in one paragraph of the total amendment to Section 24-8 of the School Code (Ill. Rev. Stat. 1971, ch. 122, par. 24-8) is further evidence that the change was not intended to provide an accelerated effective date.

Based upon the foregoing considerations, it is my opinion that the legislative intent did not encompass an early effective date for House Bill 1516 and that therefore Public Act 77-1681 amending Section 24-8 of the School Code became effective July 1, 1972.

With respect to your third question, dealing with the question of whether a retroactive application of the minimum salary schedule would constitute an impairment of the obligations of contract under Article I, Section 10 of the Constitution of the United States or Article I, Section 16 of the Constitution of 1970, the answer to the specific question raised must be in the negative. In Trenton v. New Jersey, 262 U.S. 182 (1923), the United States Supreme Court stated:

> "In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will."
> 262 U.S. 182, 187.

Also, in 16A C.J.S., Constitutional Law, § 417, it is stated:

> "As long as private rights are not infringed, the state may constitutionally pass retrospective laws waiving or impairing its own rights, or those of its instrumental subdivisions or of the public generally; and it may impose upon itself or its subdivisions new liabilities with respect to transactions already past. * * *."
>
> 16A C.J.S., Constitutional Law, 106-7.

The fact that it is permissible for the General Assembly to pass legislation impairing the obligations of contract of its subordinate instrumentalities does not mean that it has necessarily done so. The general rule is well stated in 34 I.L.P., Statutes, § 193:

> "Retroactive legislation is not favored. Statutes generally will not be construed retroactively unless it clearly appears that such was the legislative intent.
>
> A presumption exists that the General Assembly intends that statutes operate prospectively only and not retroactively, and, in the absence of express language declaring otherwise, they will not be given a retroactive operation unless the language of the statute is so clear as to admit of no other construction."
>
> 34 I.L.P., Statutes, p. 155.

For the reasons stated with respect to the effective date of Public Act 17-1681, I am of the opinion that the General Assembly

did not intend to give retroactive or retrospective effect to that Act, as there is no express language requiring such an interpretation.

The fourth question which you raise deals with the effective date of another amendment to Section 24-8 of the School Code. This appears to be primarily a clarifying amendment and will apply prospectively for school years commencing July 1, 1972, when the Act became effective. This is not to imply, however, that service in other qualifying schools obtained prior to July 1, 1972, may not be included in determining whether a teacher has sufficient experience to qualify for the increased minimum salary; a statute is not retroactive merely because it takes into account past events. 34 I.L.P., Statutes, § 193.

Very truly yours,

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