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File No. S-728

OFFICERS:
Power of the Comptroller and State Treasurer to Establish University Imprest Funds

Honorable George W. Lindberg
State Comptroller
State of Illinois
Springfield, Illinois 62706

Dear Mr. Lindberg:

This responds to your request for an opinion as to whether the second paragraph of section 21 of the State Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, par. 221), legally empowers the State Treasurer to transfer State money, as an advance to the various State colleges and universities named in the provision, to be expended by the institutions for purposes specified in an appropriation to it, all in conformity with the rules and regulations to be provided by the Comptroller with the consent

of the State Treasurer, when so required. I understand that the State Treasurer, Alan J. Dixon, has joined with you in submitting this request.

Section 21 of the State Comptroller Act, supra, provides in pertinent part as follows:

> "§21. The comptroller may provide in his rules and regulations for periodic transfers, with the approval of the State Treasurer, to the University of Illinois, Southern Illinois University and each State college and university under the jurisdiction of the Board of Governors of State Colleges and Universities or the Board of Regents of Regency Universities of not to exceed $200,000 for each campus, for use by each college or university in accordance with the imprest system, subject to the rules and regulations of the comptroller as respects vouchers, controls and reports."

As I understand it, to initially establish each fund, you propose, with the approval of the State Treasurer, to authorize him to execute a Treasurer's draft to transfer funds to a bank designated by the Treasurer for use by each named State institution for the imprest account. No warrant would be utilized. Future transfers or advances would be made to each fund, based on itemized vouchers submitted by each institution, showing expenditures from each imprest fund. Your office would then

issue a warrant to the State Treasurer, authorizing another transfer or advance of funds. You have stated specifically in your letter that "the rules and regulations would provide controls to assure that no payment was made from such advances for purposes inconsistent with, or in excess of, the amounts provided in the appropriation."

You have asked me to consider several statutory provisions which might, on their face, prohibit the proposed method of operation: Section 9 of the State Comptroller Act (Ill. Rev. Stat. 1973, ch. 15, par. 209); section 10 of the Finance Act (Ill. Rev. Stat. 1973, ch. 127, par. 146) and section 2 of "AN ACT relating to public moneys" (Ill. Rev. Stat. 1973, ch. 127, par. 171.) Before discussing these provisions it is necessary to understand the intent and purpose of section 21 of the State Comptroller Act, supra.

It is apparent from this section that the legislature intended that there be an imprest system under the control of the Comptroller, for each of the various named State colleges and universities. The Act itself does not define "imprest system" or "transfer". "Imprest" is defined in Webster's Third New

International Dictionary as "money advanced from government funds to enable a person to discharge his duties". However, the term is not limited by this definition, for an imprest system for each State college and university previously existed under other statutes which have either been repealed or amended by Public Act 77-2807, which also enacted the State Comptroller Act. For example, section 6a of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1973, ch. 127, par. 142a(3) Text effective until July 1, 1974) provided as follows:

> "§6a. * * * (3) Each such State College or University may retain out of its own receipts the sum of $200,000 to be used as a working cash fund and handled in accordance with the imprest system."

As stated by the Supreme Court in Ill. Nat. Bank v. Chegin, 35 Ill. 2d 375 at 378:

> "* * * In the construction of a statute the law requires that it be given a reasonable interpretation. Under this rule, statutes are to be construed according to their intent and meaning, taking into consideration the reason for the enactment, the existing circumstances, and the objects sought to be obtained by the legislature. (Southmoor Bank and Trust Co. v. Willis, 15 Ill. 2d 388; Spring Hill Cemetery of Danville v. Ryan, 20 Ill. 2d 608. * * * "

Therefore, we may consider not only other provisions in the Act, but the previously existing imprest systems in determining the meaning and purpose of section 21.

Section 24 of Public Act 77-2807 not only repealed the various provisions for imprest systems but required all State colleges and universities to transfer the cash balance in each of those funds abolished, to various specified funds under the control of the State Treasurer on July 1, 1974. The Act was effective otherwise on January 8, 1973.

It was the purpose of Public Act 77-2807 not to abolish the imprest system, but to change the mechanics of it. Previously, the various State colleges and universities were allowed to retain certain receipts to provide a working cash fund for each of their imprest systems. These funds were reimbursed by the then State Auditor, now the Comptroller, by warrants issued against appropriations on presentation of proper itemized vouchers. These institutions are now required to turn over their present cash funds and all future receipts to the State Treasurer, and instead the Comptroller shall provide for periodic transfers of funds to the various institutions under the imprest system.

Neither does the statute define "transfer". It is not only used in section 21 but also in section 24. Section 24 provides in part:

> "* * * [T]he cash balance in each of the funds abolished * * * shall be transferred to the University Income Fund, the Southern Illinois University income fund, the Board of Governors of State Colleges and Universities Income Fund or the Board of Regents Income Fund, respectively, and the comptroller and State Treasurer shall make appropriate accounting for such transfers."

As discussed above, the meaning of a statute can be gathered from the existing circumstances. "Transfer" as used here, does not have its normal meaning of a sale or conveyance but rather refers to a moving of funds from one depository to another. It cannot be considered an expenditure.

Now I must consider the possible legal objections to your proposed method of establishing and making advances to each impreet account. First, I shall consider section 9 of the State Comptroller Act, supra, which provides as follows:

> "§9. No payment may be made from public funds held by the State Treasurer in or outside of the State treasury, except by warrant drawn by the comptroller and presented by him to the treasurer to be countersigned except for payments made pursuant to the 'Unemployment Compensation Act', approved July 9, 1951, as amended, and Section 12-8 of the 'Illinois Public Aid Code', approved April 11, 1967, as amended.

> No warrant for the payment of money by the State Treasurer may be drawn by the comptroller without the presentation of itemized vouchers indicating that the obligation or expenditure is pursuant to law and authorized, and authorizing the comptroller to order payment.
>
> * * *

Your proposed method supposedly does not comply with this section because the State colleges and universities would be withdrawing money by check from the imprest account without first submitting an itemized voucher and without the Comptroller issuing a warrant. Each institution is required to provide an itemized voucher only after the expenditure has been made. The Comptroller would issue a warrant only to authorize a new advance, not to pay for that itemized expenditure.

The very nature of an imprest system, being an advance before an expenditure, makes it impossible to comply with this section. In The People v. Wabash R.R. Co., 395 Ill. 520, the Supreme Court stated at page 540 as follows:

> "* * * The well-settled rule of statutory construction is that where there is found in a statute a particular enactment, it is held to be operative as against the general provisions on the subject either in the same act or in the general laws relating thereto. (Ashton v.

> County of Cook, 384 Ill. 287; Frank v. Salomon, 376 Ill. 439. * * * "

I am of the opinion that section 21 is a specific provision providing for an impress system and is operative as against the general provisions of this Act. Therefore, your proposed method operation does not conflict with section 9.

Next you have asked me to consider section 2 of "AN ACT relating to public moneys", supra, which provides in pertinent part as follows:

> "§2. * * * No money belonging to or left for the use of the State shall be expended or applied except in consequence of an appropriation made by law and upon the warrant of the State Comptroller. All moneys so paid into the State treasury shall, unless required by some statute to be held in the State treasury in a separate or special fund, be covered into the general revenue fund into the State treasury. * * * "

There may be some concern that the proposed transfer is an expenditure or application of money belonging to or left for the use of the State without an appropriation or upon warrant. As explained in the definition of "transfer", the transfer itself is not an expenditure of State money. The State Treasurer has discretion as to how he will maintain control of State funds. As stated by the Supreme Court in Fairbank v. Stratton, 14 Ill. 2d 307 at 311-312:

> "* * * It is rightly contended that the Treasurer is a fiduciary and, as such, an insurer or trustee of the public funds in his custody. His duty stems from the constitution and the nature of the office of Treasurer provided for therein. (American Legion Post No. 279 v. Barrett, 371 Ill. 78.) On the other hand, he is a constitutional officer with discretionary powers and cannot be deprived of his stewardship. (People ex rel. Nelson v. West Englewood Trust and Savings Bank, 353 Ill. 451.) In the absence of fraud, corruption, oppression or gross injustice, and none has been charged or shown in this case, the courts will not interfere to control the discretionary powers of the Treasurer. Boyden v. Department of Public Works, 349 Ill. 363; Stewart v. Department of Public Works, 336 Ill. 513.
>
> * * * "

It should be evident without saying so that your proposed method of operation does not involve fraud, corruption, oppression or gross injustice and it is unlikely that the court would interfere with the discretion of the Treasurer. On the contrary, the Treasurer and the Comptroller will maintain extensive control over the use of the funds deposited in the imprest accounts, and all expenditures from the imprest fund will be made only in accordance with appropriations.

Section 2 of "AN ACT relating to public moneys", supra, was in accordance with section 17 of article IV of the Illinois

Constitution of 1870, which provided that:

> "No money shall be drawn from the treasury except in accordance with an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; * * * "

There were also other provisions in that Constitution which provided that certain fees and taxes be deposited in the State treasury. Ill. Const. art. V, sec. 23; art. IX, sec. 7 [1870].

There are no such requirements in the Illinois Constitution of 1970. The relevant provisions of the present Constitution are in article VII. Section 1 provides:

> "(a) Public funds, property or credit shall be used only for public purposes.
>
> (b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.
>
> * * * "

Section 2(b) provides:

> "(b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year."

Section 9 of the State Comptroller Act, supra, authorizes a transfer or payment, and expenditures will be made only in

accordance with the appropriations. Thus, all constitutional requirements are met.

Although I have not explicitly discussed the requirement for a warrant as provided in section 2 of "AN ACT relating to public moneys", supra, nor section 10 of the Finance Act, supra, I believe it is implicit from the above discussion that there is no conflict with either of these provisions. Section 10 of the Finance Act deals only with the situation "when an appropriation has been made". There has been no specific appropriation for the initial funds to establish the imprest system. Itemized vouchers will be submitted by each of the State colleges and universities, and warrants will be issued by the Comptroller based on these vouchers, to authorize the transfer of additional funds. This procedure is sufficient to comply with these provisions.

To the extent that these provisions may literally require otherwise, I believe the specific provisions for the imprest system must be treated as an exception to such general provisions. In The People v. Missouri Pacific R.R. Co., 342 Ill. 226, the Supreme Court stated at page 228:

> "* * * 'It is a well settled rule of construction that where there are two provisions, one of which is general and designed to apply to cases generally

> and another is particular and relates only to one subject, the particular provision must prevail and must be treated as an exception to the general provision.' (Natural Products Co. v. DuPage County, 314 Ill. 74; Dahnke v. People, 168 id. 102.) Where a special act is repugnant to or inconsistent with a former general statute, a pro tanto repeal of the prior enacted general statute will be implied or an exception will be grafted upon the earlier act by the later one. Lang v. Friesenecker, 213 Ill. 598. * * * "

The two provisions in question are general provisions and section 21 is a specific provision for establishment of an imprest system, and being later in time, is an exception to the other general provisions to the extent inconsistent therewith.

I am aware that there are other possible means of providing the initial funds to establish the imprest system, such as requiring the initial advance to be made out of the appropriation to each State institution for fiscal year 1975, or requiring a specific appropriation to establish the various funds. I do not believe that either of these methods would be necessary or was intended by the legislature. A separate appropriation would overstate State expenditures since the funds themselves would still be under the control of the State and could not be spent except in accordance with the regular appropriation, as

provided by law for each State institution. To require the advance to be made from the appropriation for fiscal year 1975, could possibly cause problems to the institutions since the balances in their working cash funds must be transferred on July 1, 1974. If the appropriation bill has not been signed by the Governor, the various institutions would be without a working cash fund. Although they would not have any authority to spend funds not appropriated, they could still spend funds appropriated for fiscal year 1974, which had been committed. Even if the appropriation bill were signed, it would be impossible for the Comptroller to issue warrants and the State Treasurer to transfer funds immediately.

Furthermore, neither of these two proposed possibilities would cure inconsistencies with section 2 and section 10. Expenditures would still be made before an itemized voucher was submitted.

I also note that the Comptroller and Treasurer have the authority to establish the imprest system now. The State institutions are not required to transfer their existing cash funds until July 1, 1974. This would indicate that the legislature

intended that there be an orderly transfer.

Statutes are to be interpreted to favor public convenience and to avoid absurd and mischievous results. This well established statutory rule has been stated by the Supreme Court in Ill. Nat. Bank v. Chegin, supra, at page 378-79 as follows:

> "* * * [W]here the language of a statute admits of two constructions, one of which would make the enactment absurd, if not mischievous, while the other renders it reasonable and wholesome, the construction which leads to an absurd result will be avoided. (People ex rel. Barrett v. Thillens, 400 Ill. 224; People ex rel. Prindable v. New York Central Railroad Co., 397 Ill. 50.) As was said in the early case of Loverin v. McLaughlin, 161 Ill. 417, 429: 'Statutes should be so construed as to give them a reasonable meaning, and should not be so interpreted as to lead to absurd consequences. 'Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience, and to oppose all prejudice to public interests.' (Sutherland on Stat. Const. sec. 324; Endlich on Int. of Stat. sec. 295.)' * * * "

Your proposed method of establishing and maintaining the imprest system is within the intent and purpose of section 21, and insures control of public funds, and is simple and convenient.

I am, therefore, of the opinion that section 21 of the State Comptroller Act, supra, legally empowers the State

Treasurer to transfer State money as an advance to various State colleges and universities, to be expended by the institutions for purposes specified in appropriations to them and that your proposed method of implementation and operation is authorized by section 21.

Very truly yours,

ATTORNEY GENERAL