



**WILLIAM J. SCOTT**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD  
62706

June 20, 1975

FILE NO. S-915

**OFFICERS:**

State Board of Education  
Does Not Have Power to Appoint  
A Representative to the Board  
of Higher Education

James M. Furman  
Executive Director  
State of Illinois  
Board of Higher Education  
500 Reisch Building  
119 South Fifth Street  
Springfield, Illinois 62701

Dear Mr. Furman:

I have your letter wherein you state:

"Section 2 of 'AN ACT creating a Board of Higher Education' provides that one of the 17 members of the Board of Higher Education shall be the Superintendent of Public Instruction of the State of Illinois. Section 1A-3 of the School Code provides that a new State Board of Education shall assume full powers and duties of the Superintendent upon expiration of a term which ended January 13,

James M. Furman - 2.

1975. Section 1A-4 provides that the State Board of Education shall appoint a chief education officer to be known as the State Superintendent of Education. The State Board has appointed a Superintendent of Education and has designated him to serve in place of the Superintendent upon those Boards and Commissions on which the Superintendent previously served.

Based upon the above-described circumstances, I am writing to ask whether the Superintendent of Education is now a legal member of the Board of Higher Education. Your assistance is appreciated."

The office of Superintendent of Public Instruction was created by section 1 of article V of the Illinois Constitution of 1870. Said section required the Superintendent of Public Instruction to perform such duties as may be prescribed by law.

The office of Superintendent of Public Instruction was eliminated from the Constitution of 1970. Section 2 of article X of the Illinois Constitution of 1970 creates a State Board of Education (hereinafter Board) which in turn has the power to appoint a chief educational officer. Said section 2 reads as follows:

"(a) There is created a State Board of Education to be elected or selected on a regional basis.

James M. Furman - 3.

The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer."

Subsequent to the adoption of the Illinois Constitution of 1970, the General Assembly passed Public Act 78-361, which became effective on October 1, 1973. Public Act 78-361 added article 1A to the School Code (Ill. Rev. Stat. 1973, ch. 122, pars. 1A-1 et seq.) which pertains to the selection of the Board and the delegation of powers and duties to the Board.

Section 1A-1 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-1) provides for a 17 member Board. Section 1A-3 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-3) provides that the Board shall assume full powers and duties after initial appointment upon the expiration of the term of the Superintendent of Public

James M. Furman - 4.

Instruction elected in 1970. The term of the Superintendent of Public Instruction elected in 1970 expired in January, 1975. During the period from initial appointment until the expiration of the term of the Superintendent of Public Instruction elected in 1970, the Board functioned in an advisory capacity to and with the Superintendent of Public Instruction. Section 1A-3 and section 1A-4(b) together provide that the Board may appoint a chief executive officer to be designated as State Superintendent of Education. It is further provided that the effective date of the appointment of a State Superintendent of Education could not take place until the expiration of the term of the Superintendent of Public Instruction elected in 1970. (See, also, Ill. Const., Trans. Schedule, sec. 7.) Section 1A-4(b) provides that the Board shall set the compensation of the chief school officer and establish his duties, powers and responsibilities.

The provision of particular importance to your inquiry is that portion of section 1A-4(c) of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4(c)) which reads as follows: "The duties of the State Board of Education shall

James M. Furman - 5.

encompass all duties currently delegated to the Office of Superintendent of Public Instruction and such other duties as the General Assembly shall designate." I am of the opinion that this provision is sufficiently ambiguous as to warrant the utilization of rules of statutory construction so as to ascertain the intent of the legislature. (See, Bergeson v. Mullinix, 399 Ill. 470, 479.) It is of particular importance to construe this provision in light of the other sections of article 1A and those provisions of law pertaining to establishment of a Board of Higher Education.

The Board of Higher Education was established in 1961 by "AN ACT creating a Board of Higher Education, defining its powers and duties, making an appropriation therefor, and repealing an act herein named". (Laws of 1961, p. 3819; Ill. Rev. Stat. 1973, ch. 144, pars. 181 et seq.) Section 2 of said Act made the Superintendent of Public Instruction an ex officio member of the Board of Higher Education.

The power of the General Assembly to make the Superintendent of Public Instruction an ex officio member

James M. Furman - 6.

of the Board of Higher Education is clear; it arises from the legislative authority to define the duties of his office. (Ill. Const., art. V, sec. 1 [1870]; People v. Inglis, 161 Ill. 256; Baro v. Murphy, 32 Ill. 2d 453, 464; People v. Toll Highway Commission, 3 Ill. 2d 218, 223; 1972 Ill. Att'y. Gen. Op. 185, 187.) Thus, serving as an ex officio member of the Board of Higher Education was one of the statutory duties of the Superintendent of Public Instruction.

Since section 1A-4(c) of the School Code provides that the duties of the Board shall encompass all the duties currently delegated to the Office of Superintendent of Public Instruction, it must be determined if the board has been authorized to replace the Superintendent of Public Instruction as a member of the Board of Higher Education. It is at this point that certain rules of statutory construction must be utilized. Specifically, it is an elementary rule of statutory construction that where the intention of the General Assembly is so inadequately or vaguely expressed that the court must resort to construction, or where the language of the statute

James M. Furman - 7.

admits of more than one construction, it is possible for the court to consider the results and consequences of a proper construction. Thus, where two constructions may be placed on a statute, the court will avoid a construction leading to absurd consequences. (City of Elmhurst v. Buettgen, 394 Ill. 248, 253.) In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable or common sense construction even though such construction qualifies the universality of its language. (Stiska v. City of Chicago, 405 Ill. 374, 379; People ex rel. Singer v. Ill. Central R. R. Co., 373 Ill. 523, 526; City of Elmhurst v. Buettgen, 394 Ill. 248, 253.) As a general rule, in construing a statute to ascertain the intention of the General Assembly, the statute should be construed as a whole or in its entirety, (Pliakos v. Ill. Liquor Comm., 11 Ill. 2d 456, 459), and the legislative intent gathered from the entire statute rather than from any one part thereof. (People ex rel. Nelson v. Olympic Hotel Bldg. Corp., 405 Ill. 440, 444.) To construe the aforementioned portion

James M. Furman - 8.

of section 1A-4(c) as authorizing the Board to take over the duty of the Superintendent of Public Instruction to serve as a member of the Board of Higher Education would lead to absurd consequences. Section 1A-1 of the School Code provides that the Board shall consist of 17 members, surely it cannot be argued that the General Assembly intended to add 17 members to the Board of Higher Education.

I am of the opinion that section 1A-4(c) does not inherently authorize the Board to appoint a representative to serve on the Board of Higher Education. There is nothing in section 1A-4(c) or the other sections of article 1A that clearly indicates such a legislative intent. Furthermore, on July 24, 1972, I advised the Superintendent of Public Instruction, Michael J. Bakalis, that he did not have the statutory authority to designate a representative to serve for him on the Board of Higher Education. (1972 Ill. Att'y. Gen. Op. 185.) Specifically, at page 187, I stated:

"Thus, the rule is that, absent statutory authority, the Superintendent of Public Instruction may not delegate any duty involving the exercise of discretionary authority and any attempt on his part to do so would be invalid."



James M. Furman - 9.

Additionally, the General Assembly was aware in its enactment of article 1A of a need to have a close working relationship between the State Board of Education and the Board of Higher Education. Section 1A-4(d) of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4(d)) requires three members of the State Board of Education and three members of the Board of Higher Education to serve on a joint Education Committee.

I am of the opinion that the State Board of Education does not have the statutory authority to appoint the State Superintendent of Education to serve on the Board of Higher Education.

Very truly yours,

A T T O R N E Y   G E N E R A L