



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 9, 1999

Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-008

STATE MATTERS:
Illinois Procurement Code-
Auditor General

William G. Holland
Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154

Dear Mr. Holland:

I have your letter wherein you pose the following questions concerning the application of the Illinois Procurement Code (30 ILCS 500/1-1 et seq. (West 1997 Supp.)):

- 1) Is the office of the Auditor General subject to the provisions of the Code?
- 2) Are university-related organizations, such as foundations and alumni associations, subject to the provisions of the Code?
- 3) Is an entity which is not included in the definition of "State agency", for purposes of the Code, exempt from all provisions thereof? And,
- 4) Does the exception for "purchase of care" contracts extend to contracts which may be related to, but not directly for, services to a recipient?

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For the reasons hereinafter stated, it is my opinion that:

- (1) the Auditor General's Office, as part of the legislative branch, is exempt from the provisions of the Procurement Code;
- (2) university-related organizations such as foundations and alumni associations are not included within the definition of "State agency", for purposes of the Code, and are excluded from compliance therewith;
- (3) exclusion from the definition of "State agency" exempts an entity from all provisions of the Code; and
- (4) the exemption for "purchase of care" contracts does not extend to all related contracts.

With respect to your first question, it is the purpose of the Code to apply competitive bidding principles and economical procurement practices to all purchases and contracts "by or for any State agency". (30 ILCS 500/1-5 (West 1997 Supp.).) Section 1-15.100 of the Code (30 ILCS 500/1-15.100 (West 1997 Supp.)) defines "State agency" to include only entities in the executive branch of government. Section 1-30 (30 ILCS 500/1-30 (West 1997 Supp.)) addresses the applicability of the Code to constitutional officers and to the legislative and judicial branches:

"Section 1-30. Applicability to Constitutional Officers and the Legislative and Judicial Branches.

- (a) The constitutional officers shall procure their needs in a manner substantially in accordance with the requirements of this

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Code and shall promulgate rules no less restrictive than the requirements of this Code.

(b) The legislative and judicial branches are exempt from this Code. The legislative and judicial branches shall make procurements in accordance with rules promulgated to meet their needs. Procurement rules promulgated by the legislative and judicial branches may incorporate provisions of this Code." (Emphasis added.)

The office of Auditor General is created in the Finance Article of the Constitution (Ill. Const. 1970, art. VIII, sec. 3) as an office in the legislative branch of State government.

(Ill. Const. 1970, art. V, sec. 1.) Further, subsection 1-2(c) of the Illinois State Auditing Act (30 ILCS 5/1-2(c) (West 1996)) provides:

" * * *

(c) This Act is intended to govern the Auditor General under the control and direction of the General Assembly. Neither the enactment of this Act nor any provision contained herein shall in any way derogate from the status of the Auditor General as a legislative officer of the State under the Constitution." (Emphasis added.)

Based upon these provisions, it is my opinion that the Auditor General, being an officer in the legislative branch of State government, is not subject to the provisions of the Code.

Secondly, you inquire whether certain university-related organizations, such as foundations and alumni associa-

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tions, are subject to the provisions of the Procurement Code. The Illinois State Auditing Act (30 ILCS 5/1-7 (West 1996)) defines "State agencies" to include "corporate outgrowths" of State agencies, as did the former Illinois Purchasing Act (30 ILCS 505/3(a) (repealed by Public Act 90-572, effective February 6, 1998)). My predecessor concluded, in opinion No. S-1117, issued July 1, 1976, that a university foundation was a "corporate outgrowth" of a university, and was, therefore, subject to both of those Acts. (1976 Ill. Att'y Gen. Op. 226.) The Illinois Procurement Code, however, does not include the term "corporate outgrowth" in its definition of "State agency". Its more restrictive definition provides:

"State agency. 'State agency' means and includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government and does include colleges, universities, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, Northeastern Illinois University, and the Board of Higher Education. However, this term does not apply to public employee retirement systems or investment boards that are subject to fiduciary duties imposed by the Illinois Pension Code or to the University of Illinois Foundation. 'State agency' does not include units

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of local government, school districts, community colleges under the Public Community College Act, and the Illinois Comprehensive Health Insurance Board." (Emphasis added.) (30 ILCS 500/1-15.100 (West 1997 Supp.).)

Generally, the organizations which are central to your inquiry are organized as separate, not-for-profit corporations distinct from the universities they serve. Their corporate charters or by-laws, however, limit their activities to matters which support the programs or interests of the universities. As distinct, not-for-profit corporations, they do not "constitute boards, commissions, agencies, institutions, authorities, [or] bodies politic and corporate of the State" in the executive branch of State government. Moreover, they are not institutions under the jurisdiction of the governing boards of the public universities and the Board of Higher Education. These organizations do not, therefore, meet any of the criteria set out in the Code for inclusion as a "State agency".

Because these organizations do not fall within the definition of "State agency", the express exclusion of the University of Illinois Foundation in the second sentence of section 1-15.100 has no effect upon the status of other, similarly-situated organizations. While the inclusion of certain exceptions in a statute may be interpreted as an expression of an intent to exclude all others, this principle is not applied where

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it would defeat the plainly indicated purpose of the General Assembly. (People ex rel. Hopf v. Barger (1975), 30 Ill. App. 3d 525, 537.) The plain language of the section simply does not encompass the university-related organizations in question. The express exception of one of the organizations, therefore, does not impliedly mean that all others are to be included.

You have also inquired regarding the effect of the exclusion of certain State entities from the definition of "State agency". You have pointed out that some provisions of the Code refer specifically to "any State agency" (e.g., 30 ILCS 500/20-80(b) (West 1997 Supp.)) while other sections refer to "all State contracts" (e.g., 30 ILCS 500/20-5 (West 1997 Supp.)). Your question concerns whether the phrase "all State contracts", in this context, refers only to contracts of "State agencies", as defined in the Code.

It is my opinion that the term "all State contracts", in these circumstances, refers only to contracts of entities which are within the purview of the Code. Since the judicial and legislative branches are exempted from the Code entirely, except for the requirement in section 1-30 that they promulgate procurement rules "to meet their needs", the reference to "all State contracts" necessarily refers only to contracts of executive

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branch agencies which are not otherwise exempted from the application of the Code.

Lastly, you have inquired whether the exemption from the Code of "purchase of care" contracts includes contracts for administrative and management services related to, but not directly for the furnishing of, services to a recipient of a State aid program. Section 1-15.68 of the Act (30 ILCS 500/1-15.68 (West 1997 Supp.)) provides:

"Purchase of care. 'Purchase of care' means a contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitative, social, or human services directly to a recipient of a State aid program." (Emphasis added.)

Although the statutory definition is fairly narrow, some agencies in implementing the Act have apparently adopted rules which include within the definition a wide range of administrative services. While it is true that an interpretation of a statute by an administrative body charged with applying the statute is ordinarily accorded deference, that principle is generally applied in instances where the statute is ambiguous and where the interpretation by the administrative body is long-continued and consistent so that the legislature may be regarded as having concurred in it. (Moy v. Department of Registration and Education (1980), 85 Ill. App. 3d 27, 31.) In this instance,

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both the Code and the administrative rules implementing it are of recent origin, and the statute does not appear to be ambiguous.

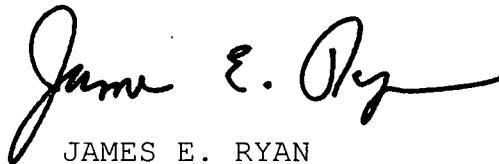
It is logical to assume that with respect to any contract for the furnishing of direct services to recipients of State aid, some administrative services must be included. For example, a vendor must maintain records sufficient to identify recipients and track the services provided. Further, provision of vocational, rehabilitative, social or human services may necessarily entail case management services which are administrative in nature. In my opinion, such contracts may appropriately be included within the "purchase of care" definition.

To the extent that administrative rules may be construed to include within the "purchase of care" exception contracts which do not pertain to direct services to recipients, but which are primarily administrative in nature, the rules, in my opinion, exceed the scope of the statutory definition. The Code unambiguously includes within "purchase of care" only contracts for the furnishing of services directly to recipients. Administrative rules cannot extend the plain language of the statute. (Northern Illinois Automobile Wreckers v. Dixon (1979), 75 Ill. 2d 53, 60.) Thus, other contracts which are not directly related

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to the provision of direct services to State aid recipients are not exempted from the requirements of the Code.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name.

JAMES E. RYAN
ATTORNEY GENERAL