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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1117

STATE MATTERS:

Whether Northern Illinois
University Foundation is a
State Agency for Purposes of
Illinois State Auditing Act
and Illinois Purchasing Act.

Honorable Robert G. Cronson
Auditor General
Lincoln Tower Plaza
524 South Second Street
Springfield, Illinois 62706

Dear Mr. Cronson:

I have your letter wherein you ask whether the
Northern Illinois University Foundation is a state agency
for the purposes of the Illinois State Auditing Act (Ill.
Rev. Stat. 1975, ch. 15, par. 301-1 et seq.) and the Illinois
Purchasing Act (Ill. Rev. Stat. 1975, ch. 126, par. 132.1
et seq.). Section 1-7 of the Illinois State Auditing Act

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(Ill. Rev. Stat. 1975, ch. 15, par. 301-7) defines "state agencies" as follows:

"'State agencies' means all officers, boards, commissions and agencies created by the Constitution, whether in the executive, legislative or judicial branch, but other than the circuit court; all officers, departments, boards, commissions, agencies, institutions, authorities, universities, bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor." (emphasis added.)

Section 3 of the Illinois Purchasing Act (Ill. Rev. Stat. 1975, ch. 127, par. 132.3) gives an identical definition to the term "state agency." According to this definition, a statutory or non-statutory corporate outgrowth of a State university is a state agency.

The Northern Illinois University Foundation is a non-profit corporation with its principal office on the campus of Northern Illinois University. The Foundation is a corporate entity distinct from the University. However, the Foundation's constitution ensures that its activities implement the interests of Northern Illinois University.

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Article I, section 4 of the Foundation's constitution describes the objectives of the Foundation. Section 4 reads in pertinent part as follows:

"Section 4. Object - a. To assist in developing and increasing the facilities of Northern Illinois University for broader educational opportunities for, and service to, its students, alumni, citizens of the State of Illinois, and nation by encouraging gifts of money, property, works of art, historical papers and documents, museum specimens, and other material having educational, artistic, scientific and/or historical value, and by such other proper means as may seem advisable.

b. To receive, hold, except as noted in paragraph c., and administer such gifts with the primary object of serving purposes other than those for which the State of Illinois ordinarily makes sufficient appropriations; to act without profit as trustee of educational, or charitable trusts; to administer gifts, grants, or loans of money or property, real or personal, whether made by or for the benefit of corporations or natural persons, and whether in the form of conventional express trusts or otherwise; to become a party to contracts, trust instruments and agreements of any type of description, and to execute negotiable obligations, as trustee or otherwise, in order to effectuate either the creation or organization of trust, or the execution of the purposes thereof.

* * *

c. To transfer forthwith into the custody and management of the University Historical Committee

whatever works of art, museum specimens, and other objects or artifacts as may lie within the realm of responsibility of said Committee as delineated in its statement of purpose and duties, which may be donated or loaned to the University. To deposit forthwith in the University Archives whatever manuscripts, records, and other appropriate material which may be donated or loaned to the University through the Northern Foundation by the owners or by persons in legal custody thereof, subject to the approval of the University Governing Board.

d. To act as the business agent of the University Governing Board in performing any other services for the University Governing Board, not herein specifically mentioned, if said Board so desires and so specifies, and said services properly come within the scope of the Northern Foundation.

e. To do such other acts and undertake such other enterprises as in the judgment of the University Governing Board shall tend to promote the interests and welfare of the Northern Illinois University."

It is evident from the objectives of the Foundation that the reason for its existence is the furtherance of the interests and welfare of the University. The close, ongoing relationship between the Foundation and the University is reflected in the composition of the Foundation's general membership and its board of directors. Membership in the Foundation provides an opportunity for a person to become an

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official part of the University community. (Article II, section 1 of the Foundation's constitution.) Article III, section 2 of the Foundation's constitution provides that University officials, alumni, and faculty members are to be represented on the Foundation's board of directors. Article VI, section 1 provides that the treasurer of the Foundation must be a staff member of the University's Office of Business Affairs.

In Opinion No. UP-418, issued March 15, 1961, my predecessor analyzed the relationship between the Southern Illinois University Foundation and Southern Illinois University. The purpose of the Foundation was to receive and administer gifts for Southern Illinois University, and University personnel were members of the Foundation's board of directors. Section 3 of the Illinois Auditing Act (Ill. Rev. Stat. 1959, ch. 15, par. 63) defined "state agencies" as follows:

"'State agencies' means all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other

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administrative unit of State government or corporate outgrowth thereof, expending or encumbering State funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived." (emphasis added.)

Opinion No. UP-418 concluded that the Southern Illinois University Foundation was a corporate outgrowth of the Southern Illinois University and was thus a state agency for the purposes of the Illinois Auditing Act. The opinion states as follows:

"In view of the fact that certain members of the board of directors of the Foundation must be officers, employees or members of the board of trustees of the University, and that of the other directors of the Foundation, two-thirds must be alumni of the University, and the further fact that the business manager of the University is treasurer of the Foundation, it would seem that the Foundation, the purpose of which, as stated in the 1960 annual report, is to receive, hold and administer gifts for the University, is no more than a corporate outgrowth of the University."

I agree with the analysis in Opinion No. UP-418.

Although the Foundation is a corporation distinct from the University, its basic dependence upon the University for its membership and its objectives establishes that the Foundation is a corporate outgrowth of the University. Since the

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Northern Illinois University Foundation is a corporate out-
growth of Northern Illinois University, it is my opinion
that the Foundation is a state agency for the purposes of
the Illinois State Auditing Act and the Illinois Purchasing
Act.

Very truly yours,

ATTORNEY GENERAL