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June 26, 1973

FILE NO. S-600

CONSTITUTION:
Effective date of
legislation

Honorable Anthony T. Dean
Director
Department of Conservation
State Office Building
Springfield, Illinois 62706

Dear Director Dean:

I have your letter wherein you state as follows:

"Attached is a copy of HB-515 which appropriates the sum of \$50,000.00 for the purchase and rehabilitation of former Governor Richard J. Oglesby's home in the City of Decatur.

Although the Bill was passed by the 77th General Assembly, it was not signed by the Governor until November 30, 1972. In view of the court decision on Parochiaid, we are requesting your recommendation as to whether funds are now available for purchase, or if the effective date will be next July."

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House Bill 515, which provides for an appropriation to the Department of Conservation for the purchase and rehabilitation of former Governor Richard J. Oglesby's Home in the City of Decatur, was introduced into the House of Representatives on February 17, 1971. House Bill 515 was amended on June 16, 1971 and passed the House of Representatives on June 17, 1971. House Bill 515, as amended, passed the Senate on May 3, 1972.

On August 1, 1972, the Governor, pursuant to the amendatory veto section of the Illinois Constitution of 1970 (Ill. Const., art. IV, sec. 9(e)) returned House Bill 515 to the House of Representatives with a specific recommendation for change. Motions to accept the Governor's recommendation for change were approved by the House of Representatives on November 27, 1972 and by the Senate on November 28, 1972. The Governor certified on November 30, 1972, that the acceptance by both Houses conformed with his recommendation.

In your letter, you in essence inquire as to the effective date of House Bill 515.

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There are two provisions of the Illinois Constitution of 1970 which are relevant to the question you raise. Section 9(e) of 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 bill 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 of 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."

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When House Bill 515 was originally enacted and sent to the Governor for his approval, lines 20 through 25, inclusive, on page 1 of engrossed House Bill 515, read as follows:

"The Department of Conservation has authority after acquisition of the Oglesby mansion to lease the property to any local political subdivision in Macon County. The Department has authority to turn over any of the remaining amount of the appropriation for administration, operation and maintenance of such property to the above political subdivision."

The Governor recommended that these lines be stricken.

In his message to the House of Representatives, the Governor explained his reasons for the recommended change in House Bill 515 as follows:

"This specific recommendation for change is necessary in order to correct two constitutional deficiencies brought to my attention by the Attorney General. In his opinion he has commented as follows:

'House Bill No. 515 violates the requirements of section 8, article IV of the Illinois Constitution of 1970, the pertinent provision of which reads: "Appropriation bills shall be limited to the subject of appropriations." This bill in addition to appropriating funds

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contains, in the last paragraph thereof, substantive provisions which are beyond the subject of appropriations. The Bill is, therefore unconstitutional.

'The last paragraph of the subject bill is also of doubtful validity in that the authority granted to the Department of Conservation is not accompanied by any legislative guidelines for the exercise thereof. This appears to be an improper delegation of legislative power to an administrative body.'

By the proposed changes the principal purpose of the legislation will be achieved, namely the acquisition and rehabilitation of Governor Richard J. Oglesby's home in Decatur.

While curing one of the constitutional impediments, the deletion of language authorizing the Department of Conservation to lease the property to a local unit of government in Macon County will not create a substantive deficiency because the Department already has such authority (1971 Ill. Rev. Stat., Ch. 127, Sec. 63a7, 63a14, 63a21). The language providing that the appropriation balances may be turned over for administration, operation and maintenance must necessarily be stricken; however, the required implementing legislation can be enacted at a later date and not unduly delay the acquisition and rehabilitation project."

Richard B. Ogilvie, Governor
of Illinois, Legislative
Message, 1972 Session
77th G.A., p. 86.

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It is clear that the changes recommended by the Governor and approved by both Houses were substantive and not merely technical or minor corrections.

Presently, People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, is the only case dealing with the question of the effect of an amendatory veto upon the effective date of the law. In that case the Illinois Supreme Court held that, at least in situations where the Governor's recommended changes are substantive in nature and not merely technical or minor 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

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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.

Therefore, House Bill 515 was "passed" on November 28, 1972 when the Senate voted to accept the Governor's recommended changes after the House had already done so.

Section 10 of article IV of the Illinois Constitution of 1970 provides that if a bill is passed after June 30 it shall not become effective until July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of its members elected to each House provides for an earlier effective date. House Bill 515 has no effective date clause. Therefore, I am of the opinion that House Bill 515 did not become effective during the fiscal year 1972-1973.

It is my understanding that your primary interest was in determining whether the funds appropriated by House Bill 515 were available for expenditure during fiscal year 1972-1973. This inquiry has been answered in the negative.

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However, it should be emphasized that no opinion is expressed herein as to the legality of expending the funds appropriated by House Bill 515 during the fiscal year 1973-1974.

Very truly yours,

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