



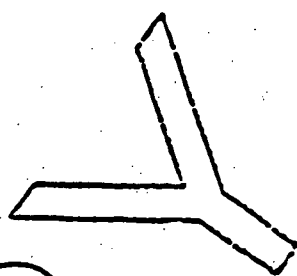
**TYRONE C. FAHNER**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
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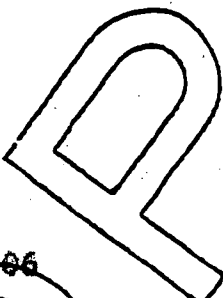
February 18, 1982

FILE NO. 82-005

**FINANCE:**  
Application of Section 9.05 of  
"AN ACT in relation to  
State finance"



Honorable Roland W. Burris  
Comptroller  
State of Illinois  
201 State House  
Springfield, Illinois 62706



Dear Comptroller Burris:

I have your letter in which you inquire whether section 9.05 of "AN ACT in relation to State finance" [State Finance Act] (added by Public Act 82-671, effective January 1, 1982, to be codified at Ill. Rev. Stat., ch. 127, par. 145f) applies to advance payments for such items as periodical subscriptions and organizational memberships for which pre-payment is required but for which the term of subscription or membership might, in some circumstances, extend beyond the expiration of the State's fiscal year lapse period. For the reasons hereinafter stated, it is my opinion that section 9.05 does not apply to such advance payments.

Section 9 of the State Comptroller Act (Ill. Rev. Stat. 1979, ch. 15, par. 209, as amended by Public Act 82-173, effective January 1, 1982) provides in pertinent part:

"Sec. 9. Warrants - Vouchers - Preaudit.

(a) 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.

(b) 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.

\* \* \*

(d) The Comptroller shall examine each voucher and all other documentation required to accompany the voucher, and shall ascertain whether the voucher and documentation meet all requirements established by or pursuant to law. \* \* \*

\* \* \*

Section 9.04 of the State Finance Act (added by Public Act 82-671; to be codified at Ill. Rev. Stat., ch. 127, par. 145e), which establishes the form and substance of vouchers for payment for goods and services obtained by State agencies, provides:

"The certification on behalf of the State agency on every State voucher for goods and services other than a payroll or travel voucher shall be as follows:

'I certify that the goods or services specified on this voucher were for the use of this agency and that the expenditure for such goods or services was authorized and lawfully incurred; that such goods or services meet all the required standards set forth in the purchase agreement or contract to which this

voucher relates; and that the amount shown on this voucher is correct and is approved for payment. If applicable, the reporting requirements of Section 5.1 of "An Act to create the Bureau of the Budget and to define its powers and duties and to make an appropriation", approved April 16, 1969, as amended, have been met.

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(Date)

(Signature)

For departments under the Civil Administrative Code, the foregoing certification shall be executed by the Chief Executive Officer of the department from whose appropriation the payment will be made, in addition to any other certifications or approvals which may be required by law."

Section 9.05 of the State Finance Act, which supplements section 9.04, and which pertains specifically to vouchers submitted for goods or services, provides:

"In the event that a voucher is submitted for advance payment of goods or services, the certification prescribed by Section 9.04 shall be made. In addition, the voucher shall state on its face that the goods or services are being procured pursuant to a formal, written contract the terms of which require advance payment. If it is not possible to execute a written contract, the voucher shall so state. The voucher shall also state that the contract requires the goods or services to be delivered or received prior to the expiration of the lapse period of the fiscal year to which the expenditures are charged."  
(Emphasis added.)

In addition, Public Act 82-576, effective January 1, 1982, amends section 33-3 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 33.3) to provide, in pertinent part:

"Official Misconduct.) A public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts:

\* \* \*

(e) knowingly and intentionally executes a false document which authorizes the disbursement of public funds or the disposal of public property.

A public officer or employee convicted of violating any provision of this Section forfeits his office or employment. In addition, he commits a Class 3 felony." (Emphasis added.)

The underscored language above was added by Public Act 82-576.

As you note in your letter, many periodical publications and organizational memberships are ordinarily available only on a prepaid, subscription basis. In such cases, certain issues of periodicals or benefits of membership may not be received prior to September 30, the expiration of the statutory lapse period for a given State fiscal year. (See, Ill. Rev. Stat. 1979, ch. 127, par. 161.) A literal interpretation of section 9.05 would, therefore, effectively prohibit any State agency from contracting for such goods or services if they will not be entirely delivered or received before the close of the statutory lapse period. Additionally, a person certifying a voucher for prepayment of these kinds of goods or services, if they cannot be entirely delivered or received before the expiration of the lapse period, could be subjected to criminal liability under the provisions of section 33-3(e) of the Criminal Code of 1961, as amended. Such a literal interpretation, particularly if applied at this point in the fiscal year, would have a severe and debilitating effect on State agencies which require such goods or services to properly perform their governmental functions.

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Statutes must be reasonably construed, so as to be applied in a practical and common sense manner. (People v. Ill. Central R.R.Co. (1940), 373 Ill. 523, 526.) It must be presumed that the General Assembly does not intend to create absurd consequences by its enactments. (Board of Education v. Britten (1957), 11 Ill. 2d 411, 414.) If a particular construction of a statute would be likely to endanger or sacrifice great public interests, it should not be assumed that such a construction was contemplated by the General Assembly, in disregard of such interests. (People v. The Canal Commissioners (1841), 4 Ill. [3 Scam.] 152, 160.) When the words of a statute, followed literally, lead to an absurd consequence, or to a construction clearly not contemplated, this constitutes a sufficient reason to depart from the language used for the purpose of ascertaining the intent. Scott v. Freeport Motor Casualty Co. (1942), 379 Ill. 155, 162.

The intent of the last sentence of section 9.05 of the State Finance Act appears to be primarily to regulate the expenditure by State agencies of surplus appropriated funds which, if uncommitted to current obligations by the expiration of the fiscal year, would lapse and be unavailable for expenditure. Last minute contracting by State agencies to avoid the lapsing of appropriated funds, for goods and services to be delivered or received long after the commitment of these funds, has created difficulty in accurately auditing expenditures, and is in derogation of the constitutional requirement of annual

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appropriations. It is clear, however, from the obvious purpose of the General Assembly in enacting Public Act 82-671, that the Act was never intended to cover either periodical subscriptions or organization memberships and that the application of the Act to such goods or services was not a contemplated result.

Furthermore, the literal application of section 9.05 to periodical subscriptions and organizational memberships would produce absurd results. Firstly, literal application could effectively preclude State agencies from obtaining certain periodical subscriptions or organization memberships commonly or ordinarily available only on a prepaid basis; and secondly, it would require the renegotiation of several hundred thousand dollars worth of periodical subscription agreements, resulting in hardship and delays in obtaining the goods or services. In either circumstance, the decision whether or not to accommodate State agencies by renegotiating such agreements or by changing previously established subscription or membership periods is in the supplier of the goods or services. As such, it is my opinion that such an application is an unanticipated result of the enactment which justifies departure from the literal language of the provision, in order to arrive at a reasonable construction which permits its practical application. Therefore, it is my opinion that section 9.05 of the State Finance Act does not apply to vouchers submitted for advance payments

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for periodical subscriptions or organizational memberships which are ordinarily obtainable only on a prepaid basis, and where the ordinary term of subscription or membership might extend beyond the expiration of the fiscal year lapse period.

It is my understanding that, in accordance with the advice given in this opinion, you will provide agencies with information concerning the proper form of voucher for the classifications of goods and services discussed herein.

Very truly yours,

  
ATTORNEY GENERAL