



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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LEGISLATIVE BRANCH:
Authority of Legislative Commission
to Control Distribution of Funds
Already Appropriated

Honorable Frank Giglio
Acting Chairman
Motor Vehicle Laws Commission
222 South College Street
Springfield, Illinois 62706

Dear Mr. Giglio:

You have asked my opinion on the constitutionality of a proposed legislative transfer of the functions of the Vehicle Recycling Board to the Motor Vehicle Laws Commission. You state the reason for this proposal is that the present Board has been inactive and has failed to deal with the problem of junked vehicles. It is my opinion that a transfer of the Board's functions to the Motor Vehicle Laws Commission as presently constituted would violate the separation-of-powers requirement of the Illinois Constitution.

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The Motor Vehicle Laws Commission is established by chapter 19 of The Illinois Vehicle Code. (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 19-101 et seq.) Its permanent membership consists of five senators, appointed by the President of the Senate, and five members of the House of Representatives, appointed by the Speaker of the House. At present, the Commission is authorized only to make studies and investigations, including a study of methods of recycling junked vehicles, and is considered a legislative commission.

The Vehicle Recycling Board is established by article III of chapter 4 of the Illinois Vehicle Code. (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 4-300 et seq.) The statute provides that the Board shall have 12 members, most of them either officers of the executive branch serving ex officio or representatives of the general public appointed by the Governor. Under section 4-305 of the Code (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 4-305) the Board is authorized, among other things, to distribute appropriated funds for disposing of abandoned vehicles:

"If not otherwise economically practicable, the Board may provide by contract with private persons or agencies, or with political subdivisions of the State of Illinois and all local governmental units of government, for the transportation of abandoned vehicles

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to wrecking, salvage or recycling plants, or, provide facilities for the collection and proper disposal of any vehicle under the provisions of this Act, as amended.

* * *

The Board may further subsidize political subdivisions of this State, local governmental units of government and local law enforcement agencies for their costs in collecting, storing and disposing of abandoned vehicles as are not otherwise recoverable.

Any expenditure of funds hereunder shall be subject to audit by the Auditor General, within the appropriations for this purpose by the General Assembly, and may be made only in the event that the proceeds of disposing of vehicles do not meet the costs of collecting, storing and transporting. * * *

You state that more than nine million dollars has heretofore been collected through special taxes for these purposes, but due to non-use has been transferred to another purpose.

The question is whether transfer to a legislative commission of these powers to distribute funds would violate the requirement of separation of powers contained in the Illinois Constitution of 1970, article II, section 1:

"The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

and in article V, section 9(a), which provides in part that:

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" * * * The General Assembly shall have no power to elect or appoint officers of the Executive Branch."

The principle that the powers of the three branches of government be kept separate is recognized implicitly or explicitly in the constitution of every State. State courts have consistently invalidated attempts by legislators to assume the duties of executive-branch officers. A leading case is People v. Tremaine (1929), 252 N.Y. 27, 168 N.E. 817, in which the New York legislature had attempted to confer upon two of its committee chairmen (along with the Governor) power to approve or disapprove allocation within departments of funds already appropriated to those departments. The New York Court of Appeals held this grant of power invalid, stating:

" * * * [T]he duties here assigned to the legislative chairmen are administrative duties, and are not mere incidents of legislation. The Legislature has not only made a law—i.e., an appropriation—but has made two of its members ex officio its executive agents to carry out the law; i.e., to act on the segregation of the appropriation. This is a clear and conspicuous instance of an attempt by the Legislature to confer administrative power upon two of its own members. It may not engraft executive duties upon a legislative office and thus usurp the executive power by indirection. [Citations.]

Should the question arise whether the appointments under consideration are legislative or administrative, a dilemma presents itself, either side of which is fatal

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to the contention of the respondent. If they are legislative in character, the appointment amounts to a delegation of the legislative power over appropriations. * * * To visualize an extreme case, one lump sum appropriation might be made to be segregated by the committee chairmen. Such a delegation of legislative power would be abhorrent to all our notions of legislation on the matter of appropriations. * * * If, on the other hand, the power is administrative, it has no real relation to legislative power. * * * The Legislature might make the segregation itself, but it may not confer administrative powers upon its members without giving them, unconstitutionally, civil appointments to administrative offices. * * *

* * *

Tremaine was cited by the Illinois Supreme Court in Gillespie v. Barrett (1938), 368 Ill. 612, 617. The appointment of Illinois legislators to certain temporary commemorative commissions was challenged under the Illinois Constitution of 1870, article IV, section 15, which prohibited civil appointments of legislators. The Illinois Supreme Court approved the New York Court of Appeals' construction of the similar New York constitutional provision, although holding that the appointments in Illinois were too temporary and of too little importance to be considered "civil appointments" within the meaning of the Illinois Constitution of 1870. Although the provision in question does not appear in the same terms in the Illinois Constitution of 1970, it is a part of the general principle of separation of

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powers still recognized in that Constitution, and thus Gillespie is some authority for the proposition that legislators may not sit on permanent commissions having significant executive powers.

Decisions in other States that have also recognized the separation-of-powers principle. In State ex rel. Meyer v. State Board of Equalization and Assessment (1970), 185 Neb. 490, 176 N.W. 2d 920, 926, the Supreme Court of Nebraska stated:

* * *

The Legislature has plenary or absolute power over appropriations. It may make them upon such conditions and with such restrictions as it pleases within constitutional limits. There is one thing, however, which it cannot do * * *. It cannot administer the appropriation once it has been made. When the appropriation is made, its work is complete and the executive authority takes over to administer the appropriation to accomplish its purpose, subject to the limitations imposed. * * *

* * *

That case involved a biennial appropriation act which divided the amount appropriated into two parts, one for each fiscal year; the court found this minor legislative control over administration permissible. In Gunter v. Blanton (1972), 259 S.C. 436, 192 S.E. 2d 473, the Supreme Court of South Carolina invalidated a statute giving the State legislative delegation from each county power to approve or disapprove any tax increase voted by that county's board of trustees. In Greer v. State (1975), 233 Ga. 667,

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212 S.E. 2d 836, 838, the Supreme Court of Georgia struck down a statute establishing an authority to construct and operate a Georgia World Congress Center, insofar as the statute provided for six of the authority's members to be legislators. In a statement that could equally apply to the distribution of several million dollars of money for recycling or disposing of automobiles, the court said:

" * * *

The question here is whether the legislature can constitutionally create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality. * * * We have to conclude that a legislator who participates as a member of the governing body of a public corporation such as the World Congress Center Authority is performing executive functions.

* * *

In re Opinion of the Justices 1976, _____ Mass. _____,
341 N.E. 2d 254, 257, held that the Ways and Means Committees of the Massachusetts House and Senate could not constitutionally decide whether a "critical need" existed for filling any vacancy in the State government, which under the statute would allow the position to be filled. The justices stated:

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" * * *

* * * We read the statute, as do all the briefs, as requiring the exercise of judgment and discretion by legislative officers.

Thus to entrust the executive power of expenditure to legislative officers is to violate art. 30 by authorizing the legislative department to exercise executive powers. * * *

* * *

And in State ex rel. Schneider v. Bennett (1976), 219 Kan. 285, 547 P. 2d 786, the Kansas Supreme Court upheld powers of a "state finance council" composed of the Governor and eight legislators to make emergency expenditures during disaster periods, but emphasized (547 P. 2d at 798) that these expenditures were only for occasional, unexpected needs and must receive the unanimous approval of the council, including the Governor. On the other hand, the Court held invalid (547 P. 2d at 797) a number of powers of the council that could be exercised by majority vote and included:

" * * *

Approval of the transfer by a state agency of a part of an appropriated item to any other item of its appropriation.

* * *

This obviously is similar to the proposed power of the Motor

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Vehicle Laws Commission to decide how to distribute appropriated funds among public and private bodies for disposing of abandoned automobiles.

In King v. Lindberg (1976), 63 Ill. 2d 159, the Illinois Supreme Court invalidated Public Act 79-1129, the "State Fair Board Act," on the ground that it provided for some members of the Board to be appointed by leaders of the General Assembly. This, of course, is analogous to the appointment of members of the Motor Vehicle Laws Commission by legislative leaders. The vice found by the Court in the Act was that members of the Board exercised enough executive powers to make the Board basically an executive-branch agency. This violated the Illinois Constitution of 1970, article V, section 9(a) quoted above, prohibiting the General Assembly from appointing officers of the executive branch. The Court pointed out (63 Ill. 2d at 163) that:

" * * *

* * * The primary function of the permanent board is to supervise and operate the State Fair, and this is clearly an executive function. * * *

Similarly, if the Motor Vehicle Laws Commission began controlling the allocation of the appropriation for recycling junked automobiles, it would be assuming primarily executive functions, creating an apparent violation of article V, section 9(a) of the Constitu-

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tion.

Thus the holdings of the supreme courts of this and other States require the conclusion that transferring the present functions of the Vehicle Recycling Board to the Motor Vehicle Laws Commission would be unconstitutional.

Very truly yours,

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