



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

March 10, 1971

FILE NO. S-279

**OFFICERS:**

**Director of the Department of Public Aid**

Honorable Cecil A. Partee  
President Pro Tempore  
Illinois State Senate  
State House  
Springfield, Illinois 62706

Dear Sir:

I have your letter of March 1, 1971 and the enclosed biographical data of Mr. Donald F. Simpson. Your letter reads as follows:

"I am writing to ask your opinion as to whether Donald F. Simpson is qualified under the law of Illinois for confirmation by the Senate as the Director of the Department of Public Aid. The factual situation from which my question arises is as follows:

- "a. Section 7.09 of the Civil Administrative Code of Illinois provides as follows:

'The Director of Public Aid shall have at least 10 years of

experience in responsible administrative capacities in the field of public assistance, and shall not have been politically active in the 5 years preceding appointment.'

"b. Mr. Simpson's background experience is set forth in the attached biographical data.

"c. Mr. Simpson is on a leave of absence from the U.S. Department of Health, Education and Welfare, and would continue in this status while serving as Illinois Public Aid Director. Your attention is directed to Senate Bill 11, Title IV of the 91st Congress, First Session, Title V-33 U.S. Code. The general provisions of this statute provide in part that an employee released on leave of absence to serve with a state government 'remains an employee of his agency'. The statute further provides that if the rate of pay of the employee is less in state government than it was in the regular agency assignment, the agency must pay a supplementary amount to equal the difference. The statute further provides that all other employee's benefits including Civil Service Retirement Credit be retained by the employee.

"d. An inquiry is directed as to the length of time Mr. Simpson has been a resident of Illinois and whether he meets the requirements

of Article VII, Section 6 of the  
Constitution of Illinois (1870)  
governing appointment of persons  
as state officers."

The biographical data of Mr. Donald F. Simpson  
states as follows:

"BIOGRAPHICAL DATA

"Donald F. Simpson

"Born: Walla Walla, Washington,  
September 28, 1917  
Married - three children

"Office Address: U. S. Department of Health,  
Education, and Welfare  
Region V  
433 West Van Buren Street,  
Room 901  
Chicago, Illinois 60607  
Telephone: Area Code 312,  
353-4237

"Home Address: 2 Hickory Trace Drive  
Justice, Illinois 60458  
Telephone: Area Code 312,  
594-1456

"Education: A.B. - Kalamazoo College,  
Kalamazoo, Michigan - 1939  
Political Science  
M.A. - Columbia University  
New York, New York - 1940  
Government and Public Ad-  
ministration

University of Illinois,  
Urbana, Illinois - 1941  
Government and Public Ad-  
ministration

"1969 - Present

Regional Commissioner  
Social and Rehabilitation  
Service, HEW Region V

Plans and directs HEW's  
Social and Rehabilitation  
Service programs in Re-  
gion V (Illinois, Indiana,  
Michigan, Minnesota,  
Ohio and Wisconsin). This  
includes the Federal-State-  
local programs of public  
assistance (Aid to Needy  
Families, Old Age Assist-  
ance, Aid to the Blind,  
Aid to the Disabled);  
medical assistance (Medic-  
aid); vocational rehabili-  
tation; child welfare ser-  
vices; mental retardation  
and other developmental  
disabilities; juvenile  
delinquency prevention  
and control; and special  
programs for older Ameri-  
cans. Research, training  
and demonstration projects  
are developed in coopera-  
tion with universities,  
hospitals, research or-  
ganizations and private  
and public health and wel-  
fare agencies in social  
and rehabilitation service  
fields.

"1952 - 1953

Administrative Officer,  
Public Health Service

Department of Health,  
Education, and Welfare

Directed management program (fiscal, personnel, supply, procurement, etc.) for a Bureau of the Public Health Service; later served as Assistant Executive Officer of the Public Health Service. Directed several management and organizational studies of major PHS programs.

'1949 - 1952

Held a variety of management positions in the Public Health Service

"Publications:

'Orientation at HEW' Public Personnel Review, Vol. XXXI, No. 4, October 1970 (with Anne N. Crutcher).

'The Worth of our Work,' The HEW Forum Papers 1967-1968, U. S. Government Printing Office, 1968

'Staff Assistance in Personnel Administration,' Society for Personnel Administration Journal, Vol. 31, No. 6, November-December 1968.

'Are You Getting the Most Environmental Health Service Out of the Tax Dollar? - The Viewpoint of the Public Administrator,' American Journal of Public Health, Vol. 49, No. 6, June 1959

'Personnel Policy and Practice,' Chicago-Cook County Health Survey, Columbia University Press, 1949

'Merit System Administration in Official Health Agencies,' American Journal of Public Health, January 1947

'Law Departments and Law Officers,' State Government, October 1941

"Professional Society and Other Memberships:

American Society for Public Administration  
American Public Health Association  
American Academy of Health Administration  
Gorgas Memorial Institute  
Professional Examination Service

"1966 - 1969

Assistant Secretary for Administration Department of Health, Education, and Welfare

Planned and directed HEW's personnel and training, management systems and evaluation, general administrative support, internal security, civil defense planning, State Merit Systems technical assistance, surplus property utilization, and related administrative programs.

"1962 - 1966

Executive Officer, Public Health Service, Department of Health, Education, and Welfare

Served as chief advisor to the Surgeon General, Public Health Service, on all administrative management matters including budget and finance, internal audit, supply and general services, and management systems. Directed work of those divisions of the Public Health Service conducting central management programs.

"1961 - 1962

Chief, Employment Division, Department of State

Directed the employment program for both foreign service and civil service personnel of the Department of State, including national recruitment programs and selection and initial placement of both civil service and foreign service personnel.

"1956 - 1961

Chief, Division of Administration, Pan American Health Organization, Regional Office of World Health Organization

Responsible for complete administrative management program of the Pan

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**American Health Organization including budget and finance, personnel, support services, procurement and property management, and management policy and evaluation.**

**\*1953 - 1956**

**Director, Division of General Services  
Department of Health,  
Education, and Welfare**

**Directed organizations providing accounting, procurement, supply, statistical processing, library services and other administrative services for the Department.**

**"Honors:**

**Distinguished Service Award - 1966  
U. S. Department of Health,  
Education, and Welfare**

**Superior Service Award -  
1956**

**U. S. Department of Health,  
Education, and Welfare**

**Meritorious Salary Increase  
for Outstanding Performance -  
1951**

**Public Health Service,  
Federal Security Agency"**

**As you have indicated in your letter, Paragraph 7.09 of Chapter 127, 1969 Illinois Revised Statutes requires that in order to be appointed Director of Public Aid a**



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person must have had at least ten years of experience in responsible administrative capacities in the field of public assistance. From the biographical data you have submitted, it would appear that Mr. Simpson meets this requirement. However, this determination is to be made when confirmation is considered and I do not wish to substitute my judgment for that of the Illinois Senate. In addition, Section 6 of Article VII of the Constitution of Illinois of 1870 requires that a person who is appointed to any office in this state must have resided in Illinois for at least one year preceding his appointment. The information which you submitted to this office does not indicate the place of residence of Mr. Simpson other than his address at Justice, Illinois.

Your attention is invited to Section 3 of Article IV of the Constitution of Illinois of 1870 which reads as follows:

"\* \* \*Nor shall any person, holding any office of honor or profit under any foreign government, or under the government of the United State, (except postmasters whose annual compensation does not exceed the sum of \$300,) hold any office of honor or profit under the authority of this state."

An important determination to be made is whether Mr. Simpson is an "officer" within the above quoted constitutional provision which prevents a person from holding an office in the State government at the same time he holds an office in the Federal government.

I have carefully read the provisions of Senate Bill 11 commonly known as the Intergovernmental Personnel Act of 1970, as it pertains to the question posed herein. That Act by its terms applies only to Federal "employees". The Act further provides that Federal "employees" may take leave of absence to become officers of State governments.

A determination of who is an officer within the prohibition of the above quoted constitutional provision is difficult because the term has variable import, the meaning of which necessarily varies with the connection with which it is used. We are informed that Mr. Simpson is a United States Civil Service employee and that (if he receives Senate confirmation) when he leaves his position as Director of Public Aid of the State of Illinois he will return to his general Civil Service status and grade and not the particular position which he now holds. Furthermore, for the purposes involved in your question,

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it is my opinion that a person who is on leave of absence from a position is not holding that position during the time he is on such leave of absence.

There is little doubt that Mr. Simpson would be holding a position of honor and profit under the State of Illinois by becoming Director of Public Aid, if he is approved by the Senate. However, according to Illinois judicial authority the acceptance by him of that office would be a constructive resignation of any prior Federal office held if it should be determined that he is, in fact, a Federal officer (Pekete v. City of East St. Louis, 315 Ill. 58; Livingston v. Ogilvie, 43 Ill. 2d 9).

As a further consideration in arriving at an opinion in this matter, I have considered the general policy of the law that an "office" must at all times be filled. It follows therefore that a person could not take a leave of absence from an "office" whereas he may take a leave of absence from an employment relationship. This is true because ordinarily an officer holds his office until his successor is appointed or is elected.

I have also examined the Illinois Constitution of 1970 which becomes effective next July 1, and I find

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that the language above quoted in Article IV, Section 3, which prohibits a person from holding an office of honor or profit in the State and Federal governments at the same time is not included therein.

In view of the above, it is my opinion that Section 3 of Article IV of the Constitution of 1870 does not prevent Mr. Simpson from being confirmed as Director of Public Aid. As the questions presented concern the Illinois Constitution and statutes, I have limited my consideration and opinion to this area of the law.

Very truly yours,

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