



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706



May 22, 1973

FILE NO. S-587

**CONSTITUTION:
Judicial Inquiry Board--
Authority to devise travel
regulations.**

Richard T. Dunn, Chairman
Illinois Judicial Inquiry Board
205 West Wacker Drive
Suite 1515
Chicago, Illinois 60606

Dear Chairman Dunn:

I have your letter wherein you state, in part, as follows:

"The Judicial Inquiry Board, created, organized and existing pursuant to the provisions of Article VI, Section 15(b) of the 1970 Constitution of the State of Illinois, requests your opinion as to whether Travel Regulations issued by the Department of Finance and approved by the Travel Control Board pursuant to authority vested in them by Public Act 76-1919 (Illinois Revised Statutes 1971, Chapter 127, Section 148.1 et seq.) apply to the necessary travel expenses incurred by the Board.

Richard T. Dunn, Chairman - 2.

The Judicial Inquiry Board is a constitutional rather than a statutory Board. It was created by the 1970 Constitution, which was adopted subsequent to the effective date of Public Act 76-1919. Public Act 76-1919 specifically excepts 'constitutionally elected State officers, and personnel under the jurisdiction of constitutionally elected State officers other than the governor' from the provisions of Travel Regulations promulgated and published pursuant to the Act. When Public Act 76-1919 became effective the 1870 Constitution remained in effect and it provided for no constitutional officers other than those elected to office; i.e., it provided for no Constitutional Boards or Commissions to whom officers or members were appointed as is the case under the 1970 Constitution. Obviously, a constitutionally created Board such as the Judicial Inquiry Board was not contemplated by the General Assembly when it adopted the bill which was subsequently approved by the Governor and became law as Public Act 76-1919. You will note in reading Article VI, Section 15(d) of the 1970 Constitution that it states affirmatively that 'Members of the Board who are not Judges shall receive necessary expenses; members who are Judges shall receive necessary expenses' It further directs the Board itself to 'adopt rules governing its procedures.' It is respectfully submitted that this constitutional mandate granting to the Board itself the right and duty to 'adopt rules governing its procedures' and providing that all members 'shall receive necessary expenses,' is of greater weight and authority than Travel Regulations promulgated by an administrative agency pursuant to a statute which became law before the adoption of the Constitution of 1970.

Richard T. Dunn, Chairman - 3.

Both the Department of Finance and the Travel Control Board have had difficulty in recognizing the Constitutional status of the Judicial Inquiry Board and have tended to equate it with a statutory board, such as the Board of Higher Education or one of the governing boards for institutions of higher education. The Judicial Inquiry Board has unusual and significant constitutional responsibilities. It is mandated by the Constitution to provide for 'rules governing its procedures' and, within the appropriations provided from time to time it should determine the necessary expenses for which its members are entitled to reimbursement rather than the Department of Finance and the Travel Control Board."

Section 15(b) of article VI of the Illinois Constitution of 1970 reads, in part, as follows:

"(b) A Judicial Inquiry Board is created * *"

Section 15(c) of article VI of the Illinois Constitution of 1970 reads, in part, as follows:

"(c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. * * *"

Section 15(d) of article VI of the Illinois Constitution of 1970 reads as follows:

Richard T. Dunn, Chairman - 4.

"(d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board."

I am of the opinion that the aforementioned provisions of the new constitution do not authorize the Judicial Inquiry Board to formulate its own travel regulations.

The chief purpose of constitutional construction is to ascertain the intent of the People of the State of Illinois who adopted the constitution and the intent of the delegates who drafted the constitution. (Hills v. City of Chicago, 60 Ill. 86). The intent and meaning of the constitution can best be determined from the language used in the constitution. (Graham v. Dye, 308 Ill. 283). The constitution should be given a reasonable and practical construction. (People v. Vickroy, 266 Ill. 384). It must not be subjected to narrow and technical reasoning. (People ex rel. Rogerson v. Crawley, 274 Ill. 139). The constitution should be read and understood according to

Richard T. Dunn, Chairman - 5.

the most natural and obvious import of the language used. Austin v. Healy, 376 Ill. 633.

From studying the language of the above quoted provisions of section 15 of article VI of the Illinois Constitution of 1970, I am of the opinion that the primary object and purpose of these provisions was to create a Judicial Inquiry Board and vest it with the responsibility of investigating and prosecuting complaints made about a Judge or Associate Judge.

The board is authorized to "adopt rules governing its procedures." (Ill. Const., art. VI, sec. 15(d)). The primary responsibility of the board is to investigate and prosecute complaints that have been made against Judges and Associate Judges. Clearly and plainly the board's rule making power is to govern the board's investigatory and prosecutorial procedures. Pursuant to this authority, the board may adopt rules pertaining to the filing of complaints, fact finding procedures, notice of hearings, and other matters pertaining to the investigation of complaints. Smith Hurd Ill. Ann. Stats., Constitution, arts. 2 to 6, p. 524 (1971).

Richard T. Dunn, Chairman - 6.

To hold that the board's rule making authority authorizes the board to formulate its own travel regulations would be to read into the constitutional language much more than was obviously intended. If the framers of the constitution had intended to authorize the board to devise its own travel regulations, it would have been a simple matter to express this intent. The obvious place for them to do so would be in the third sentence of section 15(d) of article VI of the Illinois Constitution of 1970. This sentence insures that members of the board will receive "necessary expenses."

To say the least, it would be torturing the plain language of section 15(d) of article VI of the Illinois Constitution of 1970 to construe this section to authorize the board to formulate its own travel regulations. I am, therefore, of the opinion that the board does not have the constitutional authority to formulate its own travel regulations.

The Illinois Constitution is not a grant of power to the General Assembly, it is to be regarded as a restriction on its powers. (Herb v. Pitcairn, 392 Ill. 138; People v.

Richard T. Dunn, Chairman - 7.

C.T.A., 392 Ill. 77). The Illinois Supreme Court in Gillespie v. Barrett, 368 Ill. 612, at p. 615, stated as follows:

"It has been the uniform holding of this court, both under the present constitution and prior ones, that the legislature possesses every power not delegated to some other department or to the Federal government, or not denied to it by the constitution of the State or of the United States. * * *"

Since the Illinois Constitution does not grant to the Judicial Inquiry Board the power to make its own travel regulations, I am of the opinion that the General Assembly has the residual authority to legislate on this matter.

In fact, the legislature has acted. Public Act 76-1919, which was enacted by the 76th General Assembly on May 22, 1969 and approved by the Governor on October 13, 1969, added sections 12-1 and 12-2 to AN ACT in relation to State finance. (Ill. Rev. Stat., 1971, ch. 127, pars. 148-1 and 148-2). Said section 12-1 reads as follows:

"A Travel Control Board is created consisting of the following members serving ex-officio: the Governor as chairman, the Auditor of Public Accounts and the Auditor General. Any member

Richard T. Dunn, Chairman - 8.

may designate a deputy, who may be an assistant or other subordinate, to serve in his place at any or all meetings of the board. Such designations shall be in writing and shall be directed to the chairman of the board. The board shall meet at least once each quarter. No member shall receive any additional compensation for his service as a member."

Said section 12-2 reads as follows:

"Official travel regulations shall be promulgated and published by the Department of Finance and shall be applicable to the expenditures of State funds by personnel of all State agencies as defined in the Illinois Auditing Act except the following: judges, members of the General Assembly, constitutionally elected State officers, and personnel under the jurisdiction of constitutionally elected State officers other than the governor. The travel regulations and changes therein shall become effective only upon their approval by the Travel Control Board.

Each constitutionally elected State officer other than the governor shall promulgate and publish travel regulations applicable to his office and to personnel under his jurisdiction."

In your letter you state that the above quoted provisions of AN ACT in relation to State finance (Ill. Rev. Stat., 1971, ch. 127, par. 148-1, et seq.) were enacted prior to the effective date of the new constitution. (July 1st, 1971). Therefore, the General Assembly could not have intended to

Richard T. Dunn, Chairman - 9.

make the Judicial Inquiry Board subject to regulations formulated by the Department of Finance and approved by the Travel Control Board.

At this point, it should be noted that section 9 of the Transition Schedule of the new constitution provides that all laws not contrary to or inconsistent with the provisions of the new constitution remain in full force and effect. Since sections 12-1 and 12-2 of AN ACT in relation to State finance (Ill. Rev. Stat., 1971, ch. 127, par. 148-1 and 148-2) are not contrary to or inconsistent with the provisions of the new constitution, they remain in full force and effect. Additionally, it must be remembered that statutes framed in general terms and prospective in operation apply alike to all persons and entities within their general purview and scope coming into existence after their passage. (Dean Milk Co. v. City of Chicago, 385 Ill. 565). The General Assembly must, in every instance, take things as it finds them and extend the general purpose concerning those things into the future by the use of general language. (Kitt v. City of Chicago, 415 Ill. 246). Words of a statute will be held to comprehend matters and things which

Richard T. Dunn, Chairman - 10.

are of subsequent creation and invention which would have been included had they existed when the statute was originally enacted. City of Chicago v. Willett Co., 1 Ill. 2d 311.

Section 12-2 makes the travel regulations of the Department of Finance applicable to all "state agencies" as defined in the Illinois Auditing Act.

Section 3 of the Illinois Auditing Act (Ill. Rev. Stat., 1971, ch. 15, par. 63) defines "state agencies" as follows:

"A. '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 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."

Clearly, the Judicial Inquiry Board falls within this definition of a "State agency."

It should also be noted that section 12-2 of AN ACT in relation to State finance (Ill. Rev. Stat., 1971, ch.

Richard T. Dunn, Chairman - 11.

127, par. 148-2) has been amended since the adoption of the new constitution. See, Public Act 77-1269.

This amendment deleted the word "magistrate" from section 12-2. The purpose of this amendment was to bring section 12-2 into conformance with the new constitution. The 77th General Assembly apparently saw no constitutional necessity to exempt the Judicial Inquiry Board from the travel regulations of the Department of Finance; if such a necessity did exist, the General Assembly had every opportunity to act.

I am of the opinion that the travel regulations promulgated by the Department of Finance and approved by the Travel Control Board are applicable to the Judicial Inquiry Board.

The foregoing opinion is not to be construed as a comment upon the power of the Board to regulate travel in the event of the Legislature's unreasonable action or inaction; nor is this opinion to be construed as a comment upon the extent or origin of implied powers which may exist in the absence of valid legislative direction.

Very truly yours,

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