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FILE NO. S-1338

COMPENSATION:
Establishment of "Sick
Leave Bank" for Board of
Education Employees

Dr. Joseph M. Cronin
State Superintendent of Education
100 North First Street
Springfield, Illinois 62701

Dear Dr. Cronin:

You have asked for an opinion on the permissibility of establishing a "sick leave bank" for employees of the State Board of Education. I understand that such a "bank" would operate in the following manner: Each employee who wished to belong would contribute one or more of the employee's own sick-leave days each year to a pool. Any member of the pool who stayed sick for a longer period than his or her amount of accumulated sick leave would be able to use additional days from

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the pool and thus continue being paid during the period of illness. The pool would thus amount to an insurance plan, with reserves consisting of days rather than dollars.

I note initially that the State Board of Education is exempted from the Personnel Code by section 4c of the Code (Ill. Rev. Stat. 1976 Supp., ch. 127, par. 63b104c), and has not been put under any of the provisions of that Code pursuant to the immediately preceding section 4b. (Ill. Rev. Stat. 1975, ch. 127, par. 63b104b.) Thus any limitations on the terms of employment under the Board of Education must be found in the School Code, particularly article 2 (Ill. Rev. Stat. 1975, ch. 122, pars. 2-1 et seq.) or in statutes of more general application such as the Pension Code. Ill. Rev. Stat. 1975, ch. 108 1/2, par. 1-101 et seq.

Section 14-106 of the Pension Code (to be codified in Ill. Rev. Stat. 1977, ch. 108 1/2, par. 14-106), applicable to State employees, allows such employees to receive pension credit for unused sick leave in the last department or agency of State government for which they worked. That department is required to certify to the Board of Trustees of the State Employees' Retirement

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System the amount of unused sick leave credited to each retiring employee. These provisions of the Pension Code dealing with sick leave would not be inconsistent with a sick-leave bank, provided that the number of sick-leave days "on deposit" or accumulated by each employee is "withdrawn" from the bank when he retires.

Article 2 of the School Code sets forth powers and duties originally assigned to the Superintendent of Public Instruction, but transferred to the Board of Education by section 1A-4 of the School Code. (Ill. Rev. Stat. 1975, ch. 122, par. 1A-4.) These powers and duties almost all relate to the ends to be achieved by the Board; the means to be used, such as hiring and compensation of employees, are not explicitly stated. Obviously the power and duty to achieve these ends does imply that employees are to be hired and compensated, but the General Assembly evidently intended such matters to be entrusted to the discretion of the Board. I find no provision in the statute, and am aware of no case or other statement of law, that prohibits establishment of a sick-leave bank such as you describe.

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Since the Board is given discretion within the limits of appropriations and unless otherwise limited by law to determine the amount and form of compensation for its employees, including a reasonable allowance for sickness, it is my opinion that a sick-leave bank is one permissible way of structuring that compensation; however, the determination of the necessity of a sick-leave bank to attract competent employees is the responsibility of the Board.

Very truly yours,

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