



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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**PENSIONS:
Teachers' Retirement System
Vacancies in Newly Created Positions**

Honorable Michael J. Bakalis
Superintendent of Public Instruction
302 State Office Building
Springfield, Illinois 62706

Dear Mr. Bakalis:

I have your letter pertaining to Senate Bill 668, which amended certain sections of the Illinois Pension Code (i.e., Ill. Rev. Stat. 1971, ch. 108 1/2, pars. 16-163, 16-164, 16-165 and 16-168). Senate Bill 668 was enacted by the 78th General Assembly and became effective as Public Act 78-189 on October 1, 1973.

Generally speaking, the amended sections of the Illinois Pension Code concern the establishment of the Board of Trustees of the Teachers' Retirement

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System of the State of Illinois, the manner by which the members of the Board are selected, and the method by which meetings of the Board may be called. In your letter you ask the following questions pertaining to the manner of selecting both appointed and elected members of the Board:

"Since the terms for 'appointed' members of the Board begin on July 15th of even-numbered years, do the first terms for the additional appointed members begin on July 15th of 1974, that date being the next July 15th to occur in an even-numbered year following the effective date of SB 668?

Also, do the first terms of the additional 'elected' members begin on July 15th of 1975, that date being the next July 15th to occur in an odd-numbered year following the effective date of SB 668?

Does any vacancy exist as respects the two additional elected members prior to July 15 of 1975?

Does any vacancy exist as respects the two additional appointed members prior to July 15 of 1974?"

As I understand your first two questions, you ask when do the first regular terms for additional appointed and elected members of the Board of Trustees begin? Public

Act 78-189 provides, in part:

"Sec. 16-163. Board created. A board of 9 members constitutes a board of trustees authorized to carry out the provisions of this Article and is responsible for the general administration of the system. The board is known as the Board of Trustees of the Teachers' Retirement System of the State of Illinois. The Board is composed of the Superintendent of Public Instruction, ex-officio, who shall be the president of the board; 4 persons, not members of the system, to be appointed by the Governor who shall hold no other state office; and 4 members elected from the contributing membership of the system by the contributing members and annuitants as provided in Section 16-165 of this Article.

Sec. 16-164. Board--Appointed members--Vacancies. In each even-numbered year on or before July 1, the Governor shall appoint 2 members as trustees who shall hold office for a term of 4 years beginning on July 15 next following. Each such appointee shall reside in and be a taxpayer in the territory covered by this system, shall be interested in public school welfare, and experienced and competent in financial and business management. A vacancy in the term of an appointed trustee shall be filled for the unexpired term by appointment of the Governor.

Sec. 16-165. Board--elected members--vacancies. The 4 elected trustees shall be elected, two in each odd-numbered year, in the manner hereinafter provided, for a term of 4

years beginning July 15 next following their election. Elections shall be held on May 1, or on May 2 when May 1 falls on Sunday. * * * A vacancy occurring in the elective membership on the board shall be filled for the unexpired term by the board." [emphasis added.]

The primary rule in the interpretation and construction of statutes is that the intention of the legislature should be ascertained and given effect. (Certain Taxpayers v. Sheahan, 45 Ill. 2d 75.) The legislative language itself affords the best means of exposition of legislative intent, and if legislative intent can be ascertained therefrom, it must prevail and be given effect. Droste v. Kerner, 34 Ill. 2d 495.

Public Act 78-189 clearly states that the original election of trustees is to take place in odd-numbered years. It also clearly states that the original appointment of trustees is to take place in each even-numbered year. There is no rule of statutory construction that permits a court to say that the legislature does not mean what the plain language of a statute imports. (United Airlines, Inc. v. Mahin, 49 Ill. 2d 45.) It is my opinion that the regular four-year

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term for the first of the two additional appointed members should begin July 15, 1974. The term for the second additional appointed member should begin on July 15, 1976. The first regular terms for the two additional elected members should begin July 15, 1975, and July 15, 1977, respectively. Each of these dates being the first time specified for an election or an appointment after the effective date of Public Act 78-189.

Your second two questions ask whether there are currently any vacancies on the Board of Trustees due to the enactment of Public Act 78-189.

Although there are no Illinois cases on point, decisions in other States indicate that when a law establishing an office takes effect, a vacancy in office exists at once. (State ex rel. Gannon v. Lake Circuit Court, 223 Ind. 375, 61 N.E. 2d 166 (1945); People ex rel. Synder v. Hylan, 212 N.Y. 236, 106 N.E. 89 (1914).) The primary purpose of Public Act 78-189 is to raise the membership of the Board of Trustees to nine members. Yet, under the provisions for the regular appointment

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or election of trustees, the board would not have nine members until July 15, 1977. It is a well-settled rule of statutory construction that the several provisions of a statute should be construed together in light of the general purpose of the Act so as to give effect to the main purpose of the legislature. (People ex rel. Hutchcraft v. Louisville & N. R.R. Co., 396 Ill. 502.) On October 1, 1973, four new positions were created on the Board of Trustees. It is my opinion that the General Assembly intended that these positions be treated as vacancies until the respective dates provided in the Act for election or appointment to regular four-year terms. These vacancies should be filled under the provisions of sections 16-164 and 16-165 of Public Act 78-189. Since the question has not been raised, this opinion does not take a position on whether the Governor's additional appointees may participate in the selection of persons to fill the two vacant posts for the additional elected members.

Very truly yours,

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