



**JIM RYAN**  
ATTORNEY GENERAL  
STATE OF ILLINOIS



March 4, 1996

FILE NO. 96 -018

STATE MATTERS:  
Duty of Department of Commerce  
and Community Affairs to Accept  
and Review Reimbursement Applications  
under the State Mandates Act

Mr. Dennis Whetstone, Director  
Illinois Department of Commerce  
and Community Affairs  
620 East Adams Street  
Springfield, Illinois 62701

Dear Mr. Whetstone:

Questions have been raised concerning whether, under section 4 of the State Mandates Act (30 ILCS 805/4 (West 1994), as amended by Public Act 89-304, effective August 11, 1995), the Department of Commerce and Community Affairs is required to accept and to review local government applications for reimbursement of the costs of complying with State mandates if no State funds have been appropriated to reimburse local governments for the cost of the mandate. For the reasons set forth below, it is my opinion that the Department of Commerce and Community Affairs is required to accept and review local government applications for reimbursement only in those cases in which the General

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Assembly has appropriated funds to reimburse local governments for the costs associated with the implementation of a mandate. In the absence of an appropriation by the General Assembly, the Department of Commerce and Community Affairs is required, upon a request from a unit of local government, to determine only whether a Public Act constitutes a mandate and, if so, the statewide cost of implementing the mandate.

As you are aware, the State Mandates Act limits the imposition of certain categories of State-mandated programs or expenses upon local governments without concomitant State fiscal assistance. Section 6 of the Act (30 ILCS 805/6 (West 1994)) requires the State to reimburse local governments, within the categories set forth therein, for increased costs accruing to local governments as a result of certain types of State mandates. If funds for reimbursement have not been appropriated, however, it is generally accepted that section 8 of the Act (30 ILCS 805/8 (West 1994), as amended by Public Act 89-304, effective August 11, 1995), relieves local governments of the duty to implement such mandates. See Board of Trustees of Community College Dist. No. 508 v. Burris (1987), 118 Ill. 2d 465, 469; Board of Educ. of Maine Township High School Dist. 207 v. State Bd. of Educ. (1985), 139 Ill. App. 3d 460, 463; 1984 Ill. Att'y Gen. Op. 47, 48.

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You have advised that since 1988, the Department of Commerce and Community Affairs (DCCA) has not accepted claims for reimbursement in circumstances in which the General Assembly has failed to appropriate funds to reimburse local governments for a mandated program which is subject to the Act. This policy was based on an understanding that sections 6 and 8 of the Act controlled the reimbursement process, and that, in the absence of an appropriation of funds by the General Assembly, reimbursement is not authorized and initiation of the reimbursement process is unnecessary.

Subsequently, however, the State Mandates Act has been amended by Public Act 87-113, which added subsection 4(d) of the Act, and by Public Act 89-304, which amended subsection 4(a)(2) of the Act. The stated purpose of these amendments was to clarify DCCA's duties under the State Mandates Act. See Remarks of Rep. Stern, May 8, 1991, House Debate on House Bill 1556 (Public Act 87-113) at 86; Remarks of Rep. Balthis, April 20, 1995, House Debate on House Bill 661 (Public Act 89-304) (first draft) at 5-6.

You have indicated that several local government organizations, in contrast to DCCA, have interpreted section 4 of the Act as requiring DCCA to accept and review local government applications for reimbursement notwithstanding the reimbursement procedures set forth in section 8 of the Act. Therefore, you

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have inquired whether DCCA must accept and review local government applications for reimbursement in the absence of an appropriation of State funds with which to reimburse local governments for the cost of a mandate.

It is well established that administrative agencies possess only those powers which are expressly granted to them by statute, together with those powers which may be necessarily implied therefrom to effectuate the powers which have been granted. (Lake County Bd. of Review v. Property Tax Appeal Bd. (1988), 119 Ill. 2d 419, 427; Illinois Bell Tel. Co. v. Illinois Commerce Comm'n (1990), 203 Ill. App. 3d 424, 438.) In this regard, sections 4, 7 and 8 of the State Mandates Act (30 ILCS 805/4, 805/7 805/8 (West 1994)) set forth the duties and obligations of DCCA with regard to State mandates. Specifically, section 8 of the State Mandates Act outlines the reimbursement procedures by providing, in pertinent part:

" \* \* \*

The failure of the General Assembly to make necessary appropriations shall relieve the local government of the obligation to implement any service mandates, tax exemption mandates, and personnel mandates, as specified in Section 6, subsections (b), (c), (d) and (e), unless the exclusion provided for in this Section are explicitly stated in the Act establishing the mandate. In the event that funding is not provided for a State-mandated program by the General Assembly, the local government may implement or continue the program upon approval of its governing body. If the local government approves the program

and funding is subsequently provided, the State shall reimburse the local governments only for costs incurred subsequent to the funding.

\* \* \*

(4) For the initial fiscal year, reimbursement funds shall be provided as follows: (i) any statute mandating such costs shall have a companion appropriation bill, and (ii) any executive order mandating such costs shall be accompanied by a bill to appropriate the funds therefor, or, alternatively an appropriation for such funds shall be included in the executive budget for the next following fiscal year.

\* \* \*

(c) Reimbursement Application and Disbursement Procedure. (1) For the initial fiscal year during which reimbursement is authorized, each local government, or more than one local government wishing to join in filing a single claim, believing itself to be entitled to reimbursement under this Act shall submit to the Department, State Superintendent of Education or Illinois Community College Board within 60 days of the effective date of the mandate a claim for reimbursement accompanied by its estimate of the increased costs required by the mandate for the balance of the fiscal year. The Department, State Superintendent of Education or Illinois Community College Board shall review such claim and estimate, shall apportion the claim into 3 equal installments and shall direct the Comptroller to pay the installments at equal intervals throughout the remainder of the fiscal year from the funds appropriated for such purposes, provided that the Department, State Superintendent of Education or Illinois Community College Board may (i) audit the records of any local government to verify the actual amount of the mandated cost, and (ii) reduce any claim determined to be excessive or unreasonable.

(2) For the subsequent fiscal years, local governments shall submit claims as specified above on or before October 1 of each year. The Department, State Superintendent of Education or Illinois Community College Board shall apportion the claims into 3 equal installments and shall direct the Comptroller to pay the first installment upon approval of the claims, with subsequent installments to follow on January 1 and March 1, such claims to be paid from funds appropriated therefor, provided that the Department, State Superintendent of Education or Illinois Community College Board (i) may audit the records of any local governments to verify the actual amount of the mandated cost, (ii) may reduce any claim, determined to be excessive or unreasonable, and (iii) shall adjust the payment to correct for any underpayments or overpayments which occurred in the previous fiscal year.

\* \* \*

(d) Appeals and Adjudication.

(1) Local governments may appeal determinations made by State agencies acting pursuant to subsection (c) above. The appeal must be submitted to the State Mandates Board of Review created by Section 9.1 of this Act within 60 days following the date of receipt of the determination being appealed. The appeal must include evidence as to the extent to which the mandate has been carried out in an effective manner and executed without recourse to standards of staffing or expenditure higher than specified in the mandatory statute, if such standards are specified in the statute. The State Mandates Board of Appeals [sic], after reviewing the evidence submitted to it, may increase or reduce the amount of a reimbursement claim. The decision of the State Mandates Board of Appeals [sic] shall be final subject to judicial review. However, if sufficient funds have not been appropriated, the Department shall notify the General Assembly of such cost, and

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appropriations for such costs shall be included in a supplemental appropriation bill.

(2) A local government may also appeal directly to the State Mandates Board of Review in those situations in which the Department of Commerce and Community Affairs does not act upon the local government's application for reimbursement or request for mandate determination submitted under this Act. The appeal must include evidence that the application for reimbursement or request for mandate determination was properly filed and should have been reviewed by the Department.

An appeal may be made to the Board if the Department does not respond to a local government's application for reimbursement or request for mandate determination within 120 days after filing the application or request. In no case, however, may an appeal be brought more than one year after the application or request is filed with the Department."

Although the language of section 8, standing alone, could be construed as relieving DCCA from any responsibility to accept reimbursement claims from local governments and to commence the review process in the event that the General Assembly fails to appropriate funds for the reimbursement of local governments for mandated programs subject to the Act, the intent and meaning of a statute are to be determined from the entire statute. All sections of a statute are to be construed together in light of a general purpose and plan. (Miller v. Department of Registration and Education (1979), 75 Ill. 2d 76, 81; In re Rehabilitation of American Mutual Reinsurance Co. (1992), 238 Ill. App. 3d 1, 6 appeal denied, 146 Ill. 2d 629 (1992).) There-

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fore, in order to respond fully to your inquiry, it is necessary to review DCCA's duties under other sections of the Act.

Section 4 of the Act, prior to being amended by Public Act 89-304 (see 30 ILCS 805/4 (West 1992)), provided:

"Collection and maintenance of information concerning state mandates.

(a) The Department of Commerce and Community Affairs, hereafter referred to as the Department, shall be responsible for: (1) Collecting and maintaining information on State mandates, including information required for effective implementation of the provisions of this Act. (2) Reviewing local government applications for reimbursement submitted under this Act; (3) hearing complaints or suggestions from local governments and other affected organizations as to existing or proposed State mandates; and (4) reporting each year to the Governor and the General Assembly regarding the administration of provisions of this Act and changes proposed to this Act.

The Illinois Commission on Intergovernmental Cooperation shall conduct semi-annual public hearings to review the information collected and the recommendations made by the Department under this subsection (a). The Department shall cooperate fully with the Commission, providing any information, supporting documentation and other assistance required by the Commission to facilitate the conduct of the hearings.

(b) Within 2 years following the effective date of this Act, the Department shall collect and tabulate relevant information as to the nature and scope of each existing State mandate, including but not necessarily limited to (i) identity of type of local government and local government agency or official to whom the mandate is directed; (ii) whether or not an identifiable local



direct cost is necessitated by the mandate and the estimated annual amount; (iii) extent of State financial participation, if any, in meeting identifiable costs; (iv) State agency, if any, charged with supervising the implementation of the mandate; and (v) a brief description of the mandate and a citation of its origin in statute or regulation.

(c) The resulting information from subsection (b) shall be published in a catalog available to members of the General Assembly, State and local officials, and interested citizens. As new mandates are enacted they shall be added to the catalog, and each January 31 the Department shall list each new mandate enacted at the preceding session of the General Assembly, and the estimated additional identifiable direct costs, if any imposed upon local governments. A revised version of the catalog shall be published every 2 years beginning with the publication date of the first catalog.

(d) Failure of the General Assembly to appropriate adequate funds for reimbursement as required by this Act shall not relieve the Department of Commerce and Community Affairs from its obligations under this Section."  
(Emphasis added.)

In reviewing the language quoted above, subsection 4(d) clearly indicates that DCCA was required to carry out those obligations prescribed in section 4, regardless of the adequacy of any funds appropriated by the General Assembly. DCCA's primary obligations under the section were to collect and maintain information on State mandates, to report annually to the Governor and the General Assembly regarding administration of, and proposed changes to, the State Mandates Act, to assist the Illinois Commission on Intergovernmental Cooperation fulfill its

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duties under the Act and to publish biennially a catalog which summarizes relevant information as to the nature and scope of each existing State mandate. The language of section 4 further indicates, however, that DCCA was also responsible for reviewing local government reimbursement applications submitted under the Act.

While DCCA was given the responsibility of reviewing local government reimbursement applications, it was unclear, under the language of section 4, whether it was the intent of the General Assembly to require DCCA to accept and review local government applications for reimbursement submitted under the Act, if the General Assembly failed to make an appropriation to cover the mandate. This ambiguity arose because, on the one hand, the language in section 4 does not address or grant DCCA the authority necessary to accept or process reimbursement applications; as previously noted, the reimbursement process is set forth in section 8 of the Act. Yet, subsection 4(d) required DCCA to fulfill all of its duties under section 4 which included, inter alia, reviewing local government applications for reimbursement.

When the language of a statute is susceptible of two interpretations, it is necessary to ascertain and effectuate the intention of the General Assembly in its enactment (Collins v. Board of Trustees of Firemen's Annuity and Benefit Fund of

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Chicago (1993), 155 Ill. 2d 103, 110). Where the language of the statute is ambiguous, as in the case here, resort may be had to extrinsic aids of construction. (Antunes v. Sookhakitch (1992), 146 Ill. 2d 477, 484.) Thus, it has been held that the legislative history of the statute is relevant (West v. Kirkham (1992), 147 Ill. 2d 1, 7-8; In re Marriage of Logston (1984), 103 Ill. 2d 266, 279; Dietz v. Property Tax Appeal Bd. (1989), 191 Ill. App. 3d 468, 476, appeal denied, 131 Ill. 2d 558 (1990)), as are remarks made in the course of legislative debate. With respect to the latter, statements of a sponsor of a bill are especially significant. Spinelli v. Immanuel Evangelical Lutheran Congregation (1986), 144 Ill. App. 3d 325, 330, aff'd, 118 Ill. 2d 389 (1987).

During the House debate on House Bill 1556 (Public Act 87-113, effective January 1, 1992), Representative Stern, the House sponsor, made certain comments which provide guidance on the question of whether DCCA was required to accept and review local government applications for reimbursement of the costs of complying with a State mandate in the absence of an appropriation by the General Assembly:

"Stern: Mr. Speaker and Members of the House. If you have a municipality in your district, this is a Bill you will want to listen to and vote for. This amends the State Mandates Act to provide that failure of the General Assembly to appropriate adequate funds for reimbursement does not relieve the Department of Commerce and Community Affairs

from its obligations under this Act. Now this was a Bill requested by the Northwest Municipal Conference on the basis that many of the municipalities of that organization had requested reimbursement for expenses. You remember the Mandate that required municipalities to pursue a certain course of action? When they sent their Bills to DCCA for reimbursement, they were informed that, in fact, they weren't processing any requests for reimbursement because they didn't have any money. Now, one of the things about the Mandates Act says that DCCA is required to meet the requirements of processing claims. Now if they haven't got the money, that's another question, but to say that they will not decide whether or not a particular expense is a mandate is really dodging the issue, and this is very important to the municipalities of the State of Illinois.

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(Emphasis added.) (Remarks of Rep. Stern, May 8, 1991, House Debate on House Bill No. 1556 at 83.)

"Stern: Well, my understanding of what this Bill intends to do is simply underscore the responsibilities that the mandate gave to DCCA which is to process the claims given to it by the municipalities who pursue the mandate." (Remarks of Rep. Stern, May 8, 1991, House Debate on House Bill No. 1556 at 86.)

Moreover, during the House debate on House Bill 3884, the following colloquy occurred:

"Harris: '\* \* \* A question of the Sponsor.'

\* \* \*

Harris: 'Representative, is . . . does this require the Department to spend any more money?'

Stern: 'They can do it with the staff they have now, in my opinion.'

Harris: 'Well . . . and it doesn't specifically say that the municipalities have to be reimbursed, does it?'

Stern: 'It says that their applications should be processed and they should be notified.'

Harris: 'Well, the Bill simply says that failure for us, namely we here in the General Assembly, to appropriate the dollars, does not relieve DCCA of their obligation. Right?'

Stern: 'Correct.'

Harris: 'So DCCA . . . if we don't appropriate the dollars, DCCA's not going to spend any more money or they're not going to send the municipalities any funds so really they . . . they're not spending anything under this Bill, it simply says, as I understand it, "You still have the obligation." Right?'

Stern: 'Right.'

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These comments indicate that the amendments to section 4 contained in Public Act 87-113 were intended to resolve any question regarding DCCA's responsibility to accept and to review local government applications for reimbursement even in the absence of an appropriation of funds by the General Assembly. Specifically, the statements of Representative Stern indicate that failure of the General Assembly to appropriate adequate funds was not intended to relieve DCCA from its obligations under

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the Act, including its responsibility to accept and process reimbursement applications. Therefore, DCCA was responsible for accepting and reviewing applications for reimbursement submitted by local governments, even in the absence of an appropriation of State funds to reimburse local governments for the cost of the mandate.

Subsequently, however, section 4 of the Act was amended by Public Act 89-304, and now provides, in pertinent part:

"Collection and maintenance of information concerning state mandates.

(a) The Department of Commerce and Community Affairs, hereafter referred to as the Department, shall be responsible for:

(1) Collecting and maintaining information on State mandates, including information required for effective implementation of the provisions of this Act.

(2) Reviewing local government applications for reimbursement submitted under this Act in cases in which the General Assembly has appropriated funds to reimburse local governments for costs associated with the implementation of a State mandate. In cases in which there is no appropriation for reimbursement, upon a request for determination of a mandate by a unit of local government, or more than one unit of local government filing a single request, other than a school district or a community college district, the Department shall determine whether a Public Act constitutes a mandate and, if so, the Statewide cost of implementation.

(3) Hearing complaints or suggestions from local governments and other affected organizations as to existing or proposed State mandates.

(4) Reporting each year to the Governor and the General Assembly regarding the administration of provisions of this Act and changes proposed to this Act.

The Illinois Commission on Intergovernmental Cooperation shall conduct semi-annual public hearings to review the information collected and the recommendations made by the Department under this subsection (a). The Department shall cooperate fully with the Commission, providing any information, supporting documentation and other assistance required by the Commission to facilitate the conduct of the hearings.

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In construing statutes, the primary rule is to ascertain and give effect to the intent of the General Assembly.

(People v. Jameson (1994), 162 Ill. 2d 282, 287.) Legislative intent is best evidenced by the language used in the statute.

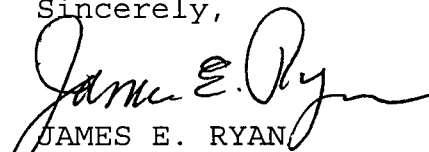
(Bogseth v. Emanuel (1995), 166 Ill. 2d 507, 513.) Where the language of a statute is clear and unambiguous, it should be given effect as written. Solich v. George and Anna Portes Cancer Prevention Ctr. (1994), 158 Ill. 2d 76, 81.

Under the language quoted immediately above, it is clear that DCCA is still required to review local government applications for reimbursement when the General Assembly has appropriated funds for the purpose of reimbursing units of local government for the costs of implementing a mandate. In the absence of an appropriation by the General Assembly, DCCA does not now have a similar duty to review local government applica-

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tions for reimbursement. Rather, the plain language of subsection 4(a)(2) provides that when the General Assembly has made no appropriation for reimbursement, then a unit of local government may file a request for a mandate determination. Under section 4, the mandate determination shall consist of a finding by DCCA regarding whether a particular Public Act is a mandate and, if so, the costs of implementing the mandate on a statewide basis. Nothing in the language of the statute indicates that DCCA is to make a determination regarding the costs incurred by units of local government for implementing a mandate. Consequently, it is my opinion that DCCA is not required to accept or to review local government applications for reimbursement of the costs of complying with States mandates in the absence of an appropriation of State funds to reimburse local governments for the cost of the mandate.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL