



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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FILE NO. 04-002

GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:

Application of the State Officials  
and Employees Ethics Act and the  
Lobbyist Registration Act to the  
State Board of Elections

Mr. John Keith, Chairman  
State Board of Elections  
1020 South Spring Street  
P.O. Box 4187  
Springfield, Illinois 62708

Dear Mr. Keith:

I have General Counsel Colleen Burke's letter wherein she inquired, on behalf of the State Board of Elections, whether the provisions of section 5-55 of the recently enacted State Officials and Employees Ethics Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be codified at 5 ILCS 430/5-55) and new section 3.1 of the Lobbyist Registration Act (added by Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003, to be

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codified at 25 ILCS 170/3.1) are applicable to the members of the State Board of Elections. Section 5-55 of the State Officials and Employees Ethics Act prohibits persons with significant interests in State contracts, their spouses and immediate family members living with those persons from serving "on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor." Section 3.1 of the Lobbyist Registration Act contains a similar prohibition which is applicable to lobbyists and their immediate families. For the reasons stated below, it is my opinion that members of the State Board of Elections are subject to the provisions of section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act.

Enacted by the General Assembly as part of a comprehensive ethics reform package designed to apply to all public officers and public employees, the State Officials and Employees Ethics Act was intended, among other things, to ensure the integrity of the State's boards and commissions by prohibiting lobbyists and individuals with personal financial interests in State contracts from serving on the State's numerous boards and commissions. Accordingly, section 5-55 of the State Officials and Employees Ethics Act provides:

**Prohibition on serving on boards and commissions.**

Notwithstanding any other law of this State, on and after February 1, 2004, *a person*, his or her spouse, and any immediate family member living with that person *is ineligible to serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor if* (i) that person is entitled to receive more than 7 1/2% of the total distributable income under a State contract other than an employment contract or (ii) that person together with his or her spouse and immediate family members living with that person are entitled to receive more than 15% in the aggregate of the total distributable income under a

State contract other than an employment contract; except that this restriction does not apply to any of the following:

(1) a person, his or her spouse, or his or her immediate family member living with that person, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and

(2) a person, his or her spouse, or his or her immediate family member living with that person, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action. (Emphasis added.)

Similarly, section 3.1 of the Lobbyist Registration Act provides:

Prohibition on serving on boards and commissions.  
Notwithstanding any other law of this State, on and after February 1, 2004, but not before that date, *a person required to be registered under this Act*, his or her spouse, and his or her immediate family members living with that person *may not serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor*; except that this restriction does not apply to any of the following:

(1) a registered lobbyist, his or her spouse, or any immediate family member living with the registered lobbyist, who is serving in an elective public office, whether elected or appointed to fill a vacancy; and

(2) a registered lobbyist, his or her spouse, or any immediate family member living with the registered lobbyist, who is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but does not make binding recommendations or determinations or take any other substantive action. (Emphasis added.)

The prohibitions contained in section 5-55 of the State Officials and Employees

Ethics Act and section 3.1 of the Lobbyist Registration Act are clear; the ultimate issue is

whether the State Board of Elections constitutes "a board \* \* \* authorized or created by State law," for purposes of these provisions. The phrase "authorized or created by State law" is not defined in either the State Officials and Employees Ethics Act or the Lobbyist Registration Act. It will be necessary, therefore, to determine the meaning to be given to the phrase.

Turning first to the phrase "State law," although the word "law" may be broadly or narrowly interpreted depending on its context (*In re Cameron T.*, 949 P.2d 545, 550 (Ariz. Ct. App. 1997), the term "law" generally includes constitutions, statutes, the common law and the various rules which the courts or administrative agencies from time to time adopt. *See, e.g., People v. Cornille*, 136 Ill. App. 3d 1011, 1016 (1985); *Gorton v. American Cyanamid Co.*, 533 N.W.2d 746, 751 (Wis. 1995), *cert. denied*, 516 U.S. 1067, 116 S. Ct. 753 (1996); *State ex rel. Conway v. Superior Court*, 131 P.2d 983, 986 (Ariz. 1942), *overruled in part on other grounds*, 247 P.2d 617 (Ariz. 1952); *In re Cameron T.*, 949 P.2d at 550 (Ariz. Ct. App. 1997). Likewise, the word "create" commonly means "[t]o bring into being; to cause to exist; to produce; to make, for example, a machine or a corporation." Ballentine's Law Dictionary 287 (3<sup>rd</sup> ed. 1969); *see also Webster's Third New International Dictionary of the English Language Unabridged* 532 (1993). Based upon the commonly understood meaning of the foregoing words and because of the General Assembly's intent to adopt an act applicable to all public officers and public employees, it is my opinion that the phrase "created by State law" in this context refers to those bodies that have been established or otherwise provided for by the Illinois Constitution or by Illinois statute.

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The State Board of Elections is provided for in article III, section 5 of the Illinois Constitution of 1970, which simply states:

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

Clearly, article III, section 5 of the Constitution is a mandate to the General Assembly both to create a State Board of Elections and to enact legislation that addresses the membership of and other details pertinent to the operation of the State Board of Elections. Consequently, because the State Board of Elections is provided for in the Constitution, and thereby a board "created by State law," it is my opinion that the members of the State Board of Elections are subject to the provisions of section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act.

Even assuming, *arguendo*, that the State Board of Elections is not a board created by the Illinois Constitution, it is clear that the State Board of Elections would constitute a board created by State statute. In accordance with the constitutional mandate, the General Assembly has enacted legislation that establishes the State Board of Elections and addresses the membership of and other details pertinent to the operation of the Board. 10 ILCS 5/1A-1 *et seq.* (West 2002). Specifically, section 1A-1 of the Election Code (10 ILCS 5/1A-1 (West 2002)) provides:

*A State Board of Elections is hereby established which shall have general supervision over the administration of the*

registration and election laws throughout the State, and shall perform only such duties as are or may hereafter be prescribed by law. (Emphasis added.)

In opinion No. S-372, issued December 16, 1971 (1971 Ill. Att'y Gen. Op. 140), Attorney General Scott was asked to determine the status of the State Electoral Board, the predecessor to the State Board of Elections, because the General Assembly had not enacted any law relating to "the size, manner of selection and compensation" of the State Board of Elections or otherwise provided for its activation prior to the effective date of article III, section 5 of the Illinois Constitution. In concluding that the State Electoral Board would continue to function "[u]ntil such time as there is an existing and functioning State Board of Elections" (1971 Ill. Att'y Gen. Op. at 142), Attorney General Scott stated, "[t]he essential question is whether said [article III,] Section 5 [of the Illinois Constitution] is self-executing. It is my considered judgment that it is not self-executing and, pending action of the General Assembly, the State Board of Elections, even though named in the Constitution, will be without legal existence and without effect on the status of the State Electoral Board. \* \* \* It seems obvious that a State Board of Elections will not exist either *de jure* or *de facto* until its members have been selected, its size set and other factors effecting its viability, have been determined, all by legislative enactment of the General Assembly." 1971 Ill. Att'y Gen. Op. at 141.

It is clear from Attorney General Scott's opinion that although the Constitution requires the creation of the State Board of Elections, the Board actually came into existence only upon the General Assembly's passage of legislation specifying the membership of the Board, the manner of selection of the Board's members and their compensation.

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Ms. Burke's letter notes that section 1A-1 of the Election Code uses the word "established" with respect to the origins of the State Board of Elections and not the term "created." The term "establish" ordinarily means "[t]o originate, to create; to found and set up; to put or fix on a firm basis; to put in a settled or efficient state or condition." Ballentine's Law Dictionary 417 (3<sup>rd</sup> ed. 1969); *see also* Webster's Third New International Dictionary of the English Language Unabridged 778 (1993). Applying the commonly understood meaning of the term "establish," it is my opinion that in enacting the language of section 1A-1 of the Election Code, the General Assembly has "created" the State Board of Elections "by State law."

For the reasons set forth above, it is my opinion that regardless of whether the State Board of Elections is characterized as having been created by the Illinois Constitution or by Illinois statute, the Board has been "created by State law," for purposes of section 5-55 of the State Officials and Employees Ethics Act and section 3.1 of the Lobbyist Registration Act. As a result, its members are subject to the prohibitions contained therein.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan", written in a cursive style.

LISA MADIGAN  
Attorney General