



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

September 29, 1998

FILE NO. 98-022

COMPENSATION:
Salary of Part-Time
State's Attorneys Under the
1998 Compensation Review Board Report

The Honorable Kevin C. Kakac
State's Attorney, Wayne County
Post Office Box 641
Fairfield, Illinois 62837

Dear Mr. Kakac:

I have your letter wherein you inquire whether State's Attorneys who serve in counties with populations of not less than 10,000 and not more than 30,000 inhabitants, and who have elected pursuant to statute to engage in the private practice of law, are entitled to receive the compensation fixed in the salary schedule contained in the report of the Compensation Review Board filed on April 30, 1998. For the reasons hereinafter stated, it is my opinion that all State's Attorneys are entitled to the increased salaries provided for in the report.

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As you are aware, the Compensation Review Act (25 ILCS 120/1 et seq. (West 1996)) creates a procedure for determining the compensation of specified State officers. The several State's Attorneys were placed under the jurisdiction of the Compensation Review Board by Public Act 90-375, effective August 14, 1997. Under the terms of the Act, the legislative leaders are authorized to appoint a 12 member Compensation Review Board (25 ILCS 120/2 (West 1996)) which is charged with the duty of conducting public hearings, establishing a recommended salary for each officer included under the Act and filing a report related thereto with both chambers of the General Assembly by May 1 of each even-numbered year. (25 ILCS 120/4 (West 1997 Supp.).)

As required by the Act, the Board filed its first report in January, 1985. Subsequent reports were filed in 1986, 1988, 1990, 1992, 1994, 1996 and 1998. It is the report of the Compensation Review Board filed on April 30, 1998, which is the focus of your inquiry.

The General Assembly may disapprove of the Board's recommendations; in the absence of legislative disapproval, however, the salary recommendations contained in the Board's report become effective after 30 session days. (25 ILCS 120/5 (West 1996).) Although two resolutions to disapprove the 1998 report, House Joint Resolution 63 and House Joint Resolution 66,

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advanced to the floor, neither was adopted by both houses of the General Assembly.

The latest report of the Compensation Review Board (hereinafter referred to as the "Report") is divided into two parts. The first part, a nine page document entitled "1998 Report of the Compensation Review Board" (hereinafter referred to as "Part I of the Report"), was addressed only to the three affected constitutional officers and the four legislative leaders. That part of the Report primarily summarizes the testimony from the hearings conducted by the Board and explains the bases upon which the Board made its salary recommendations. With regard to the State's Attorney's salaries, Part I of the Report provides, in pertinent part:

" * * *

The basic statutory powers and responsibilities of State's Attorneys are set forth in the Illinois statutes, 55 ILCS 5/3-9001 *et seq.* At our hearings, the State's Attorneys presented evidence relating to the performance of these responsibilities. In some of Illinois' counties, elected State's Attorneys are authorized to engage in private practice, but a different salary schedule is in effect for those who do so.

The present population categories and applicable salaries are as follows:

POPULATION	NO. OF COUNTIES IN GROUP	STATE'S ATTORNEY'S SALARY WITHOUT PRIVATE PRACTICE	STATE'S ATTORNEY'S SALARY WITH PRIVATE PRACTICE
Cook County	1	\$112,124	No Private Practice allowed
Over 30,000	49	\$96,837	No Private Practice allowed
20,000-30,000	8	\$75,000	\$65,000
10,000-20,000	31	\$71,500	\$61,500
Under 10,000	13	\$55,500	\$55,500

State's Attorneys in counties where the population is less than 10,000 are permitted to maintain private legal practice. State's Attorneys in counties where the population is between 10,000 and 30,000 may elect to engage in private practice. If they do so, they receive the lower salary. At the hearing, the State's Attorneys testified that few, if any, State's Attorneys actually engage in the private practice of law. Even in counties where it is permitted, State's Attorneys do not have the time to pursue the private practice of law. Accordingly, to encourage full-time prosecutors, there has been no recommendation for an increase where a State's Attorney engages in private practice.

* * *

"

(Italics in original.) (Emphasis added.)
 (1998 Report of the Compensation Review
 Board, April 30, 1998, at 6-7.)

The second part of the Report consists of a 10 page document entitled "Report of the Compensation Review Board" (hereinafter referred to as "Part II of the Report"), which, in addition to the affected constitutional officers, is also addressed to all members of the Illinois House of Representatives and all members of the Illinois Senate. That portion of the

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Report contains six separate recommendations regarding specific salary increases for public officials as well as a schedule of the proposed salary for each public office included in the report. With regard to the salaries of State's Attorneys, Part II of the Report provides, in pertinent part:

" * * *

WHEREAS, after posting due notice, the Board held a public hearing on April 27, 1998, in Chicago, Illinois, at which the Board voted on the following Motions to determine the compensation of Public Officials and all said Motions carried, as follows:

* * *

6. To increase the salaries of all State's Attorneys in all population categories by Four Thousand and no/100ths (\$4,000.00) dollars, effective July 1, 1998 and by another Four Thousand and no/100ths (\$4,000.00), effective July 1, 1999, subject to further increases as are derived by application of the annual COLA.

WHEREAS, after posting due notice, the Board held a public hearing on April 30, 1998 at which the Board voted to amend the Report solely as it relates to the compensation of State's Attorneys and, further the Board voted on the following motion, which carried:

1. In lieu of the Board's prior recommendation for State's Attorneys, to establish the annual compensation of state's attorneys, effective July 1, 1998 and prior to application of any COLA as follows:

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1.	<u>In Counties with</u> <u>Less than 10,000 population</u>	<u>\$ 65,212</u>
2.	<u>In Counties with</u> <u>10,000 - 20,000 population</u>	<u>84,012</u>
3.	In Counties with 20,000 - 30,000 population	88,125
4.	In Counties with more than 30,000 population	113,783
5.	Cook County	131,745

and to increase the annual compensation of all State's Attorneys in all population categories by 3%, effective July 1, 1999, all subject to further increases as are derived by application of the annual COLA; * * *

* * *

"

(Emphasis added.) (Report of the Compensation Review Board, April 30, 1998, at 1-3; see also Report of the Compensation Review Board, April 30, 1998, at 9-10.)

Because of the apparent inconsistencies between the provisions of Part I of the Report and Part II of the Report, you have inquired whether you, as the State's Attorney of a county with a population of between 10,000 and 20,000 inhabitants (see Illinois Blue Book 424 (1993-1994)) who has elected to maintain a private legal practice, are entitled to receive the increased compensation set forth in the salary schedule in Part II of the Report.

Because a report of the Compensation Review Board is submitted to the General Assembly for its review and consideration and is subject to legislative action, it must be construed

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under the same principles that govern the construction of statutes. In this regard, it is well established that a declaration of policy or a preamble is not a part of the legislative act itself and that a preamble has no substantive legal force.

(Lieber v. Board of Trustees of Southern Illinois University (1997), 176 Ill. 2d 401, 413-4.) Thus, while a preamble may be used to clarify ambiguous portions of an Act, it may not be used to create an ambiguity. Triple A Services, Inc. v. Rice (1989), 131 Ill. 2d 217, 227; Randall v. Wal-Mart Stores, Inc. (1996), 284 Ill. App. 3d 970, 974.

Part I of the Report is in the nature of a preamble to Part II of the Report. As noted above, Part I of the Report does not contain specific salary recommendations for the several public officials who are subject to the Compensation Review Act, but only summarizes the testimony presented at the hearings conducted by the Compensation Review Board and explains how that information was considered in the Board's ultimate salary recommendations. Moreover, Part I of the Report is directed only to the four legislative leaders. Thus, it does not appear that Part I of the Report was intended to be relied upon by the general membership of the General Assembly in considering the Board's recommendations.

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The salary schedule in Part II of the Report makes no distinction between part-time and full-time State's Attorneys; it merely provides that State's Attorneys are entitled to receive the salary specified for the size of the county in which they serve. It is well established that where statutory language is plain and unambiguous, it must be given effect as written. (City of Chicago v. Morales (1997), 177 Ill. 2d 440, 448.) As quoted above, the original recommendation regarding State's Attorneys' salaries was for an increase of \$4,000 to "the salaries of all State's Attorneys in all population categories." (Emphasis added.) While the original recommendation was subsequently amended "to establish the annual compensation of State's Attorneys" according to the salary table contained in Part II of the Report, nothing in the table or in the amendatory language indicates to the reader that the recommended increases were to apply only to full-time State's Attorneys. Moreover, Part II of the Report is the only part of the Report that was apparently intended to be reviewed by all members of the General Assembly. Consequently, it must be assumed, based upon the plain language of Part II of the Report, that it was the understanding of the General Assembly's members that all State's Attorneys would be entitled to the stated compensation if the Report became effective.

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This construction of the language of Part II of the Report finds additional support in the provisions of section 4-2001 of the Counties Code (55 ILCS 5/4-2001 (West 1997 Supp.)) which provides, in pertinent part:

" * * *

(b) Except in counties containing fewer than 10,000 inhabitants and except as provided in this paragraph, no state's attorney may engage in the private practice of law. However, in any county between 10,000 and 30,000 inhabitants or in any county containing 30,000 or more inhabitants which reached such population between 1970 and December 31, 1981, the state's attorney may declare his intention to engage in the private practice of law by filing a written declaration of intent to engage in the private practice of law with the county clerk. The declaration of intention shall be irrevocable during the remainder of the term of office. The declaration shall be filed with the county clerk within 30 days of certification of election or appointment, or within 60 days of March 15, 1989, whichever is later. In that event the annual salary of such state's attorney shall be as follows:

* * * "

Under section 4-2001, all State's Attorneys in counties containing fewer than 10,000 inhabitants are considered part-time State's Attorneys, as a matter of law, and are therefore entitled to engage in the private practice of law. It is well settled that, when possible, statutes (and by extension, the Report) should be construed so that no term is rendered superfluous or

meaningless. (Advincula v. United Blood Services (1996), 176 Ill. 2d 1, 26.) To construe the table in Part II of the Report in a manner which excludes raises for all part-time State's Attorneys would render that part of the salary scale addressing State's Attorneys in counties with less than 10,000 population meaningless.

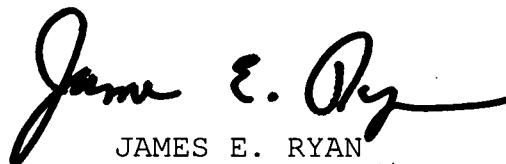
In addition, subsection 4-2001(b) of the Counties Code permits State's Attorneys in counties with a population of between 10,000 and 30,000 inhabitants to elect to maintain a private legal practice. In order to do so, a State's Attorney must file a written declaration of his or her intent to engage in the private practice of law within 30 days of the certification of his or her election. Once given, the declaration "shall be irrevocable during the remainder of the [State's Attorney's] term of office." While the language of Part I of the Report indicates that "State's Attorneys do not have the time to pursue the private practice of law" and that "to encourage full-time prosecutors, there has been no recommendation for an increase [in salary] where a State's Attorney engages in private practice", Part I of the Report overlooks the fact that for those State's Attorneys who have filed a declaration of intent to engage in the private practice of law, there is no mechanism by which to revoke the declaration. In construing statutes, it must be assumed that

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the General Assembly did not intend to produce an absurd or unjust result. (Cummins v. Country Mutual Insurance Co. (1997), 178 Ill 2d 474, 479.) To exclude a salary increase for part-time State's Attorneys for the sole purpose of encouraging them to serve full-time, when there is no mechanism by which a part-time State's Attorney may revoke a declaration to maintain a private practice and become a full-time State's Attorney, would not produce the result that the Compensation Review Board sought. Although allowing part-time State's Attorneys to earn a salary equivalent to their full-time colleagues while maintaining the right to engage in the private practice of law is no doubt an unforeseen consequence of the conflicting provisions of the Report, it cannot logically be avoided. Of course, nothing precludes the General Assembly from addressing this result by an appropriate amendment to section 4-2001 of the Counties Code.

Therefore, for the reasons set forth above, it is my opinion that all State's Attorneys, part-time and full-time, are entitled to receive the salary increases set forth in Part II of the most recent report of the Compensation Review Board.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan".

JAMES E. RYAN
ATTORNEY GENERAL