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SPRINGFIELD

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**ADMINISTRATIVE LAW:**

Applicability of Illinois Administrative  
Procedure Act to the Board of Trustees  
of the University of Illinois

Honorable Harry Yourell  
State Representative  
Chairman, Joint Committee on Administrative Rules  
612 South Second Street - Lower Level  
Springfield, Illinois 62786

Dear Representative Yourell:

I have your letter wherein you ask whether the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq.) is applicable to the Board of Trustees of the University of Illinois. Section 2 of the Act (Ill. Rev. Stat. 1977, ch. 127, par. 1002) provides that the Act applies to every "agency" as that term is defined in the Act. Section 3.01 of the Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.01) defines the term "agency" as follows:

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"'Agency' means each State Board, commission, department, or officer, other than the Governor, legislature, or the courts, authorized by law to make rules or to determine contested cases."

Therefore, in order for the Act to apply to the Board of Trustees of the University of Illinois, the Board must be a "State Board" and must be authorized by law to make rules or to determine contested cases. It is my opinion that the Board of Trustees meets these requirements and is thus subject to the Illinois Administrative Procedure Act.

I am aware that in People v. Barrett (1943), 382 Ill. 321, 342, 347, the Illinois Supreme Court held that the Board of Trustees of the University of Illinois, as a corporation, was separate and distinct from the State and that, as a result, the Attorney General was not its legal advisor. Relying on Barrett, the court in Board of Trustees of the University of Illinois v. Industrial Commission (1969), 44 Ill. 2d 207, 212, ruled that the Board of Trustees was an entity independent of the State; the court therefore held that the Board was not within the immunity clause of the 1870 Constitution (Ill. Const. 1870, art. IV, § 26) and that section 19(f)(1) of the Workmen's Compensation Act (Ill. Rev. Stat. 1967, ch. 48, par. 138.19(f)(1)) did not prohibit the Board from seeking judicial review of a decision

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of the Industrial Commission. The court in Board of Trustees, however, did not hold that the Board of Trustees of the University of Illinois was not an arm of the State. Kane v. Board of Governors of State Colleges and Universities (1976), 43 Ill. App. 3d 315, 322.

The appellate court in Kane examined the statutory provisions relating to the Board of Governors of State Colleges and Universities and concluded that the Board of Governors was not autonomous and totally independent of the State of Illinois. Rather, the court held that the Board of Governors was an arm of the State which was to be sued, as other State agencies, in the Court of Claims. An examination of the statutory provisions relating to the Board of Trustees of the University of Illinois demonstrates that the Board of Trustees is also an arm of the State.

The Board of Trustees is a creation of the General Assembly. (Ill. Rev. Stat. 1977, ch. 144, par. 22.) The Governor serves on the Board of Trustees; the nine elected members of the Board are chosen by the voters of the State at general elections. (Ill. Rev. Stat. 1977, ch. 144, par. 41.) The Board has the power to acquire property. (Ill. Rev. Stat. 1977, ch. 144, pars. 22, 48.1, 70.2.) However, the Board can

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only acquire and hold property as the trustee and agent for the State (People v. Barrett (1943), 382 Ill. 321, 341.) The State is the beneficial owner of all property, the title to which may be held by the Board of Trustees. People ex rel. Olmsted. v. University of Illinois (1928), 328 Ill. 377, 362.

The Board of Trustees is required generally to pay income received by the University of Illinois into the State Treasury, to be held in a special fund. The General Assembly is authorized to make appropriations from this special fund for the support, operation and improvement of the University of Illinois. (Ill. Rev. Stat. 1977, ch. 127, par. 142d.) The Board's expenditures are subject to both the State Comptroller Act (Ill. Rev. Stat. 1977, ch. 15, par. 201 et seq.) and the Illinois State Auditing Act. Ill. Rev. Stat. 1977, ch. 15, par. 301-1 et seq.

The persons employed by the Board of Trustees are employees of the State. (People ex rel. Redman v. Board of Trustees (1918), 283 Ill. 494, 499.) They are covered by the State University Civil Service System (Ill. Rev. Stat. 1977, ch. 24 1/2, par. 38b1 et seq.) and are participants in the State Universities Retirement System. Ill. Rev. Stat. 1977, ch. 108 1/2, par. 15-101 et seq.

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These statutory provisions and court cases demonstrate clearly that the Board of Trustees is a State board. Although the Board for some purposes may be separate and distinct from the State, it is not autonomous and completely independent of the State. The Board of Trustees administers the University of Illinois according to the requirements of State statutes and within the limits of the General Assembly's appropriation. "It functions solely as an agency of the State for the purpose of the operation and administration of the university, for the State." (People v. Barrett (1943), 382 Ill. 321, 343.) See also Pope v. Parkinson (1977), 48 Ill. App. 3d 797, 802, wherein the court not only assumed that the University of Illinois was, as a State agency, subject to the Open Meetings Act (Ill. Rev. Stat. 1977, ch. 102, par. 41 et seq.) but also, relying on the Kane case, stated explicitly that it was an arm of the State.

In addition to being a State board, the Board of Trustees is authorized by law to make rules. Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.09) defines "rule" as follows:

"'Rule' means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include

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(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms."

The Board of Trustees is expressly authorized by statute to make rules which meet this definition, (e.g. Ill. Rev. Stat. 1977, ch. 23, par. 2209 (rules for the management of the Surgical Institute for Children); ch. 127, par. 132.5 (rules for purchases)). In addition, it is the generally accepted rule that State agencies have implied powers to make all necessary and reasonable rules to carry out their express powers and duties. FCC v. Schreiber (1965), 381 U.S. 279, 289; Kerr's Catering Service v. Dep't of Industrial Relations (1962), 57 Cal 2d 319, 329, 369 P. 2d 20, 26.

The Board of Trustees of the University of Illinois is a State board, and it is authorized by law to make rules. Therefore, the Board of Trustees meets both of the requirements for being an "agency" as that term is defined in section 3.01 of the Illinois Administrative Procedure Act. Because the Board of Trustees is an "agency", it is my opinion that the Illinois

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Administrative Procedure Act is applicable to the Board.

Very truly yours,

ATTORNEY GENERAL