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SPRINGFIELD

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FILE NO. 81-039

STATE MATTERS:

**Authority of the Illinois Law
Enforcement Commission to Award
Federally-Derived Funds to Subgrantees
Absent Specific Appropriation from the
General Assembly**

Honorable James R. Thompson
Governor
Room 207 State Capitol
Springfield, Illinois 62706

Dear Governor Thompson:

I have your letter wherein you inquire whether the awarding of funds derived from a Federal grant obtained by the Illinois Law Enforcement Commission to the Illinois Department of Children and Family Services would be violative of Illinois law. You state in your letter:

" * * * [T]he Illinois Commission on Delinquency Prevention received no appropriation from the General Assembly for its ordinary and contingent expenses for FY 82. As a consequence, the Department of Children and Family Services had endeavored to provide certain of the services previously furnished by the Commission. Funding for this effort is expected to be provided by the Illinois Law Enforcement Commission in the form of a \$1.7 million federal (Law Enforcement Assistance Administration) juvenile justice grant.

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* * * In Shapp v. Sloan, 367 A.2d 791 (Pa. Com. 1976), the court ruled that the use of federal funds for such programs should be determined solely by the legislature. Arguably, the ruling supports the conclusion that the use of federal funds by a state in the absence of authorization by the legislature would be inappropriate. * * *

* * *

For the reasons hereinafter stated, it is my opinion, based on the facts submitted, that the distribution of the funds in question in the manner you have described does not violate Illinois law. Nor does the ruling in Shapp v. Sloan, the facts of which are distinguishable from the situation in Illinois, preclude such distribution of funds.

A mechanism for the expenditure of Federally-derived funds by recipient State agencies has been provided by statute. Section 9 of the State Comptroller Act (Ill. Rev. Stat. 1979, ch. 15, par. 209) provides that:

"No payment may be made from public funds held by the State Treasurer in or outside of the State treasury, except by warrant drawn by the Comptroller and presented by him to the treasurer to be countersigned except for payments made pursuant to the 'Unemployment Compensation Act', approved July 9, 1951, as amended, and Section 12-8 of the 'Illinois Public Aid Code', approved April 11, 1967, as amended.

No warrant for the payment of money by the State Treasurer may be drawn by the Comptroller without the presentation of itemized vouchers indicating that the obligation or expenditure is pursuant to law and authorized, and authorizing the Comptroller to order payment. No warrant for the expenditure, disbursement, contract, administration, transfer

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or use of federal funds by any recipient State agency subject to the reporting requirements of Section 5.1 of 'An Act to create a Bureau of the Budget and to define its powers and duties and to make an appropriation', approved April 16, 1969, as now or hereafter amended, shall be drawn by the Comptroller until the Comptroller receives certification from the recipient agency that such federal funds have been reported to the Bureau as required by that Section.

The Comptroller shall examine each voucher and all other documentation required by or pursuant to law to be filed with him and shall ascertain the legality of the transaction. The Comptroller shall also determine whether unencumbered appropriations or unencumbered obligational or expenditure authority other than by appropriation are available to incur the obligation or to make the expenditure of public funds. If he has reason to believe from the documents filed in connection therewith that such obligation or expenditure of public funds is contrary to law or unauthorized, or if he determines that unencumbered appropriations or other obligational or expenditure authority are not available from which to incur the obligation or make the expenditure, the Comptroller shall refuse to draw a warrant. The Comptroller shall maintain separate records of such transactions.

The Comptroller may refuse to draw a warrant if a voucher presented to him does not comply with rules or regulations adopted by him pursuant to this Act.

This Section does not affect the duty and responsibility of State agencies to preaudit their encumbrances, expenditures, and other transactions as otherwise required by law." (Emphasis added.)

Section 5.1 of "AN ACT to create a Bureau of the Budget and to define its powers and duties, etc." (Ill. Rev. Stat. 1979, ch. 127, par. 415) provides in pertinent part that:

"Under such regulations as the Governor may prescribe, every State agency, other than State colleges and universities, agencies of legislative and judicial branches of State government, and elected State executive officers not including the Governor, shall furnish to the Bureau for its approval all applications for federal grants, contracts and agreements. Any application for federal funds which has not received Bureau approval shall be considered void and any funds received as a result of such application shall be returned to the federal government before they are spent. Each State agency subject to this Section shall, at least 45 days before submitting its application to the federal agency, report in detail to the Bureau what the grant is intended to accomplish and the specific plans for spending the federal dollars received pursuant to the grant. The Bureau may approve the submission of an application to the federal agency in less than 45 days after its receipt by the Bureau when the Bureau determines that the circumstances require an expedited application. Such reports of applications and plans of expenditure shall include but shall not be limited to:

* * *

(3) a list of State or local agencies utilizing the financial assistance as direct recipients or sub-grantees;

(4) a description of each program proposed to be funded by the financial assistance or grant; and

(5) a description of any financial, program or planning commitment on the part of the State required by the federal government as a requirement for receipt of the financial assistance or grant.

All State agencies subject to this Section shall immediately report to the Bureau any awards of federal funds and any and all changes in the programs, in awards, in program duration, in schedule of fund receipts, and in estimated costs to the State of maintaining the program if and when federal assistance is terminated, or in direct and indirect costs, of any grant under which they are or expect to be receiving federal funds.

* * *

Each State agency subject to this Section shall include in each report to the Comptroller of the receipt of federal funds the identifying number

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applicable to the grant under which such funds are received. (Emphasis added.)

For the purposes of the above section, "State agency" is defined as follows:

"'State Agency,' whether used in the singular or plural, means all Departments, Officers, Commissions, Boards, Institutions and bodies, politic and corporate of the State, including the Offices of Clerk of the Supreme Court and Clerks of the Appellate Courts; except it shall not mean the several Courts of the State, nor the Legislature, its Committees or Commissions, nor the Constitutionally elected State Officers." (Ill. Rev. Stat. 1979, ch. 127, par. 411.)

Therefore, assuming that the requirements of section 3.1 of "AN ACT to create a Bureau of the Budget and to define its powers and duties, etc." are complied with, it appears that a warrant may be drawn by the Comptroller and presented to the Treasurer for disbursement of funds held in the special fund by the Treasurer. Consequently, disbursement of Federally-derived funds, although not required to be specifically appropriated, is subject to reporting and various other statutory controls.

Due to the failure of the Illinois General Assembly to appropriate funds, the Illinois Commission on Delinquency Prevention was effectively abolished. Sections 2, 5.10, and 5.16 of the Illinois Commission on Delinquency Prevention Act (Ill. Rev. Stat. 1979, 1980 Supp., ch. 23, pars. 2702, 2705.10, 2705.16) provide that:

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"§ 2. The purpose of this Act is to conserve the human resources represented by the youth of the State and to protect society more effectively by providing a program looking toward the prevention of delinquency and crime and by assisting communities in establishing and operating youth welfare and delinquency prevention programs designed to divert children away from the criminal justice system, and by coordinating these programs. Since conditions contributing to delinquency exist in the community where the delinquent child is raised and in the circumstances and associations which effect his early development, it is, therefore, declared that the prevention of delinquency is a matter of public concern and that the State shall encourage the development of local community organizations for effective action on this problem. The enlistment of local people individually and in organized groups in cooperative efforts to attack the problem of delinquency in their immediate neighborhood shall be a basic purpose of the Commission."

"§5.10. To provide financial assistance through grants-in-aid or any other state or federal funding source, for programs or projects designed to carry out the purposes of this Act."

"§5.16. To accept grants, gifts, and bequests for the purpose of exercising its authority under this Act."

In addition, section 5.14 of the Illinois Commission on Delinquency Prevention Act (Ill. Rev. Stat. 1980 Supp., ch. 23, par. 2705.14) provided that the Commission on Delinquency Prevention:

" * * * have the authority to accept temporary custody of, consent to medical care for, provide advocacy, counseling and other services for, and provide placement for any minor taken into temporary custody under Article 3 of the 'Juvenile Court Act' as a person alleged to be a minor otherwise in need of supervision, where such actions or services may provide an alternative to detention."

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In your letter you have referred to the Federal grant to be provided as a Federal Law Enforcement Assistance Administration juvenile justice grant. I am unable to locate any specific Federal program grant by that name. Presumably you are referring to a Federal formula grant made by the Federal Law Enforcement Assistance Administration, Office of Juvenile Justice and Delinquency Prevention, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974 (42 USCA §§ 3711, 3733, 5611). Section 5631 of the Juvenile Justice and Delinquency Prevention Act (42 USCA § 5631) provides that:

"The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system."
(Emphasis added.)

In order for States to receive such formula grants, however, a State must have submitted a plan for carrying out purposes consistent with the applicable provisions of section 3733 and 5633 (42 USCA § 3733, 5633). I assume that the grant in question is being made pursuant to such an approved State plan. As indicated above, the purposes for which such Federal grants may be used appear to be broad and include juvenile prevention and rehabilitation programs and programs to improve juvenile justice systems. It is apparent that the now-abolished Illinois

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Commission on Delinquency Prevention had the statutory authority to accept Federal funding in furtherance of the broad purposes, set out above, for which it was created.

The Illinois Law Enforcement Commission was created in 1977 pursuant to "AN ACT creating an Illinois Law Enforcement Commission and defining its powers and duties" (Ill. Rev. Stat. 1979, ch. 38, par. 209-1 et seq.), section 1 of which provides that:

"Purpose of Act. The purpose of this Act is to stimulate the research and development of new methods for the prevention and reduction of crime; to encourage the preparation and adoption of comprehensive plans for the improvement and coordination of all aspects of law enforcement and criminal and juvenile justice; and to permit evaluation of State and local programs associated with the improvement of law enforcement and the administration of criminal and juvenile justice, as provided in the federal Crime Control Act of 1973, as amended, and the federal Juvenile Justice and Delinquency Prevention Act of 1974, including their subsequent amendments or re-enactments, if any."

In addition, sections 6.08, 6.09 and 6.12 of that Act (Ill. Rev. Stat. 1979, ch. 38, pars. 209-6.08, 209-6.09, 209-6.12) provide that:

"§6.08. To apply for, receive, disburse, allocate and account for grants of funds made available by the United States pursuant to the federal Crime Control Act of 1973, as amended, and the federal Juvenile Justice and Delinquency Prevention Act of 1974, including their subsequent amendments or reenactments, if any, and such other similar legislation as may be enacted from time to time;"

"§6.09. To insure that no less than the minimum percentage of all federal funds granted to the Commission for planning purposes and

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required by federal law to be made available to units of general local government or combinations of such units to enable them to participate in the formulation of an annual comprehensive State plan will in fact be passed through to such units; however, if all or a portion of such funds are not required for such participation, the Commission may expend the remainder in any fashion authorized by law;"

"§6.12. To receive applications for financial assistance from units of general local government and combinations of such units; State agencies; and private organizations of all types, whether applying on their own behalf or on behalf of one or more of the governmental units specified above; and to disburse available federal and state funds to such applicant or applicants. All disbursements shall be made pursuant to an approved State plan for the improvement of criminal or juvenile justice and shall comply with all applicable State and federal laws and regulations. The Commission shall provide for distribution of funds with due regard for population and the incidence of crime within the several regions and communities of the State;"
(Emphasis added.)

According to your letter, the Illinois Department of Children and Family Services "has endeavored to provide certain of the services previously furnished by the Commission [Illinois Commission on Delinquency Prevention]". You have not specified the nature of the services which will be performed by the Department of Children and Family Services, but I shall assume that they are related to programs and/or projects connected with juvenile justice and delinquency prevention. From an examination of "AN ACT creating the Department of Children and Family Services, codifying its powers and duties, etc."
(Ill. Rev. Stat. 1979, 1980 Supp., ch. 23, pars. 5001 et seq.).

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it appears that the Department of Children and Family Services is authorized to accept funds as a subgrantee for certain purposes related to juvenile delinquency prevention programs assuming that those disbursements are made by the Illinois Law Enforcement Commission pursuant to an approved purpose and comply with all applicable State and Federal laws and regulations. (Ill. Rev. Stat. 1979, ch. 38, par. 209-6.12.)

Section 1 of "AN ACT creating the Department of Children and Family Services, codifying its powers and duties, etc." (Ill. Rev. Stat. 1979, ch. 23, par. 5001) provides that:

"The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act."
(Emphasis added.)

Section 5 of that Act (Ill. Rev. Stat. 1980 Supp., ch. 23, par. 5005) provides in pertinent part that:

" * * *

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

* * *

The Department shall accept for care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the 'Juvenile Court Act'. The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for

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care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the 'Juvenile Court Act', but no such child shall be committed to the Department by any court without the approval of the Department, except a minor less than 13 years of age committed to the Department under subsection (a)(4) of Section 5-2 of the Juvenile Court Act.

* * *

Consequently, because the Department of Children and Family Services is responsible for the care and training of certain juvenile delinquents, the Department appears to have the statutory authority to provide certain programs and rehabilitative services in that area and to accept grants of Federally-derived funds from the Illinois Law Enforcement Commission to the extent that such monies are ultimately used in accordance with and for a purpose consistent with the Federal program requirements.

Additionally, as you have requested, I have examined the ruling of the Commonwealth Court of Pennsylvania in Shapp v. Sloan and it is my opinion that the line of reasoning therein does not preclude the distribution of the funds in question in the manner you have described.

In the Shapp case, the court upheld State legislation which mandated that money paid into the State treasury from State taxation or any other source, including Federal funds derived from Federal aid programs, be paid out of the State treasury only by legislative action in the form of a specific

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appropriation act or other statutory enactment. Based on a constitutional provision that "no money shall be paid out of the treasury, except on appropriations made by law * * * ", the court determined that legislation prohibiting the State Treasurer from issuing any warrant for requisition of funds derived from Federal funds unless specifically appropriated by the General Assembly to the purposes of Federal aid programs, did not violate the doctrine of separation of powers. Although the Illinois Constitution has a provision similar to that of the Pennsylvania Constitution (Ill. Const. 1970, art. VIII, § 2(b)), I do not read the holding in the Shapp case as authority for the proposition that Federal funds received by the Illinois Law Enforcement Commission may be allocated to Illinois Department of Children and Family Services only pursuant to specific appropriation by the General Assembly.

As an initial matter, as pointed out on pages 795 and 796 of the case, Federal funds allocated by the Federal Government to the approved Federal aid program in Pennsylvania were by statute required to be deposited in the general fund of the Commonwealth and disbursed from it under current voucher or requisition procedures employed generally with respect to disbursements from the general fund. According to the court:

" * * *

In essence, Act No. 117-1976 prohibits the State Treasurer from issuing any warrant for requisition of funds derived from Federal funds or to be used as State matching funds incident to Federal aid programs unless specifically appropriated by the General Assembly.

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It also mandates that all such Federal funds be deposited in the General Fund without designation as a restricted or special account. Its complementary Act No. 17-A-1976 appropriates such Federal funds to the purposes of the Federal aid programs as is encompassed within such legislation.

* * *

It is my understanding that such federally-derived funds in Illinois are not deposited in the general revenue fund but are set aside in special Federal trust accounts in the State treasury. Moreover, as discussed by the court on pages 796-798 of the opinion, the General Assembly of Pennsylvania apparently decided to assume full fiscal control over Federal funds available to Pennsylvania. This policy was evidenced by the legislation enacted by the Pennsylvania General Assembly discussed above which provided for requisition of federally-derived funds only by specific appropriation and mandated deposit of such funds in the general fund without designation as a restricted or special account.

Illinois does not have a statute which restricts the requisition and application of federally-derived funds by requiring that they be specifically appropriated by the General Assembly. However, the 82d Illinois General Assembly, in the last session, passed such legislation. Section 1 of Senate Bill 497 would have provided in pertinent part as follows:

"Section 1. Section 9c is added to 'An Act in relation to State finance', approved June 10, 1919, as amended, the added Section to read as follows:

(Ch. 127, new par. 145a.2)

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Sec. 9c. State agencies may make expenditures of funds furnished to the State of Illinois by the United States Government or any agency or instrumentality thereof, whether such funds are furnished as grants, reimbursement or otherwise, only as appropriated by law or pursuant to a specific grant of statutory authority to expend or disburse federal funds without an appropriation therefor.

* * *

"

In vetoing Senate Bill 497 on August 12, 1981, you pointed to the already existing procedures which provide for the fiscal supervision of these funds and the need to maintain flexibility within the State system to allow State agencies to take advantage of Federal funding programs. Although the Senate overrode your veto on October 15, 1981, the House, on October 28, 1981, failed to override. Presently, no Illinois statute requires that funds derived from a Federal source to a State agency be expended solely pursuant to specific appropriation. The situation in Illinois is clearly distinguishable from the facts of the Shapp case.

Consequently, for the reasons stated above, the awarding of funds derived from the Federal grant by the Illinois Law Enforcement Commission to the Department of Children and Family Services for the prevention of juvenile delinquency and the promotion of juvenile justice does not appear to violate Illinois law.

Very truly yours,

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