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FILE NO. S-916

OFFICERS:

State Board of Education Without
Authority to Succeed Superintendent
of Public Instruction to Membership
on Certain Boards

Jack Witkowsky, Chairman
State Board of Education
302 State Office Building
Springfield, Illinois 62706

Dear Mr. Witkowsky:

I have your letter wherein you state:

"Article X of the Constitution of the State of Illinois, Section 2 creates a State Board of Education to be elected or selected on a regional basis. Article 1A-4C of the School Code provides inter alia:

The duties of the State Board of Education shall encompass all duties currently delegated to the Office of the Superintendent of Public Instruction and such other duties as the General Assembly shall designate.

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Some of the duties that were delegated to the Office of the Superintendent of Public Instruction and to the Superintendent of Public Instruction comprised being a member and a member ex officio on advisory boards, committees and boards of educational institutions. Some of these boards are now questioning the procedure for the succession to these boards either by State Board of Education members or by someone designated by them.

Section 1A-2 of the School Code provides inter alia:

No member of the State Board of Education shall be gainfully employed or administratively connected with any school system or institution of higher learning, public or private, nor shall they be members of a school board or board of school trustees of a public or non-public school, college, university or technical institution.

I am therefore requesting your opinion on the legality of members of the State Board of Education or their designees assuming positions on the above mentioned boards that were previously occupied by the Superintendent of Public Instruction, Michael J. Bakalis, or his designees. There are more than 30 such positions.

* * *

Enclosed please find a copy of my opinion S- 915 addressed to James M. Furman, Executive Director of the Board of Higher Education, wherein I state that the State Board of Education may not designate the State Superintendent of Education to serve on the Board of Higher Education.

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As you will note in reading opinion S-915 I quote that part of section 1A-4(c) of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4(c)) which reads: "The duties of the State Board of Education shall encompass all duties currently delegated to the Office of Superintendent of Public Instruction and such other duties as the General Assembly shall designate." I am of the opinion that this grant of powers does not authorize the State Board of Education to succeed the Superintendent of Public Instruction as a member of the Board of Higher Education or as a member of the boards, committees, commissions and councils listed below. The State Board of Education is designed to consist of 17 members; as pointed out in my opinion S-915 the entire Board of Education cannot feasibly succeed the Superintendent of Public Instruction as a member of these various boards, committees, commissions and councils. Additionally, at this time there is no statutory authorization for the State Board of Education to appoint a representative to serve on these boards, committees, commissions and councils. In direct answer to

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your question, I am of the opinion that the State Board of Education has not been granted the statutory power to succeed the Superintendent of Public Instruction as a member of the following boards, committees, commissions and councils, nor may the State Board of Education appoint a representative to these various governmental agencies. My opinion is directly applicable to the following:

- (1) Commission on Children (Ill. Rev. Stat. 1973, ch. 23, par. 2192.)
- (2) Technical Advisory Committee on Aging (Ill. Rev. Stat. 1973, ch. 23, par. 6108.01.)
- (3) Dangerous Drugs Commission (Ill. Rev. Stat. 1974 Supp., ch. 91 1/2, par. 120.4-1.)
- (4) Board of Trustees of the Teachers' Retirement System (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 16-163.)
- (5) The Interagency Council on the Bikeways Program (Ill. Rev. Stat. 1973, ch. 121, par. 604.)
- (6) Educational Commission of the States (Ill. Rev. Stat. 1973, ch. 122, par. 100-2.)

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- (7) Illinois Educational Council (Ill. Rev. Stat. 1973, ch. 122, par. 100-3.)
- (8) The Illinois Community College Board (Ill. Rev. Stat. 1973, ch. 122, par. 102-1.)
- (9) Adult and Continuing Educational Council (Ill. Rev. Stat. 1974 Supp., ch. 122, par. 202-3.)
- (10) Advisory Board to the Division of Conservation Education (Ill. Rev. Stat. 1973, ch. 122, par. 698.3.)
- (11) School Study and Survey Commission (Ill. Rev. Stat. 1973, ch. 122, par. 755.)
- (12) Illinois Telecommunications Commission (Ill. Rev. Stat. 1973, ch. 122, par. 851.)
- (13) Illinois Educational Development Board (Ill. Rev. Stat. 1973, ch. 122, par. 1053.)
- (14) Capitol City Planning Commission (Ill. Rev. Stat. 1973, ch. 123, par. 31.)
- (15) Civil Defense Advisory Council (Ill. Rev. Stat. 1974 Supp., ch. 127, par. 273.)
- (16) Board of Trustees of the University of Illinois (Ill. Rev. Stat. 1973, ch. 144, par. 41.)

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(17) Board of Higher Education (Ill. Rev. Stat. 1973, ch. 144, par. 182.)

(18) Board of Regents (Ill. Rev. Stat. 1973, ch. 144, par. 302.)

(19) Board of Trustees of Southern Illinois University (Ill. Rev. Stat. 1973, ch. 144, par. 652.)

(20) Board of Governors of State Colleges and Universities (Ill. Rev. Stat. 1973, ch. 144, par. 1002.)

I recognize that with regard to the following governmental agencies the Superintendent of Public Instruction was granted the statutory power to designate someone to serve in his place. Section 2-1 of the Public Community College Act (Ill. Rev. Stat. 1973, ch. 122, par. 102-1) provides, in pertinent part, as follows:

"§ 2-1. There is created the Illinois Community College Board hereinafter referred to as the 'State Board'. The State Board shall consist of 10 members as follows: the Superintendent of Public Instruction, or his chief assistant for liaison with higher education when designated to serve in his place, as an ex-officio voting member; * * * (emphasis added.)

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Section 2-3 of the Adult Education Act (Ill. Rev. Stat. 1973, ch. 122, par. 202-3) provides, in pertinent part, as follows:

"§ 2-3. Adult and Continuing Education Council.)
An Adult and Continuing Education Council is established and shall consist of 12 members.
* * * The director of Children and Family Services, the Director of Corrections, the Director of Mental Health, the Director of Public Aid, the Director of Public Health, the Director of Vocational Rehabilitation and the Superintendent of Public Instruction shall serve as ex officio members of the Council. Any such ex officio member of the Council may designate an individual employed by his Department to serve in his place and represent his Department on the Council. * * *" (emphasis added.)

Section 1 of "AN ACT creating the Capitol City Planning Commission, defining its powers and duties and making an appropriation therefor" (Ill. Rev. Stat. 1973, ch. 123, par. 31) provides, in pertinent part, as follows:

"§ 1. The Capitol City Planning Commission, hereinafter referred to as the Commission, is created. The Commission shall consist of the Governor, the Director of Public Works and Buildings, the Director of Local Government, the Director of General Services, the Director of Conservation, the Superintendent of Buildings and Grounds, the Chief State Architect, the Chairman of the Illi-

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nois Building Authority, the State Historian, the Superintendent of Public Instruction, the Mayor and members of the City Council of Springfield, or their designated representatives. * * * (emphasis added.)

Section 2 of the Regency Universities Act (Ill. Rev. Stat. 1973, ch. 144, par. 302) provides, in pertinent part, as follows:

"§ 2. Members of Board. The Board shall consist of 9 members appointed by the Governor, by and with the advice and consent of the Senate, the Superintendent of Public Instruction or his designated representative and one nonvoting student member from each university governed by the Board under this Act. * * * (emphasis added.)

Section 2 of "AN ACT providing for the management, operation, control and maintenance of Southern Illinois University" (Ill. Rev. Stat. 1973, ch. 144, par. 652) provides, in pertinent part, as follows:

"§ 2. The Board shall consist of 7 members appointed by the Governor, by and with the advice and consent of the Senate, the Superintendent of Public Instruction, or his chief assistant for liaison with higher education when designated to serve in his place, ex officio, * * *." (emphasis added.)

Section 2 of "AN ACT to provide for the management, operation, control and maintenance of the State Colleges and Universities

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System (Ill. Rev. Stat. 1973, ch. 144, par. 1002) provides, in pertinent part, as follows:

"§ 2. The Board shall consist of 9 members appointed by the Governor, by and with the advice and consent of the Senate, the Superintendent of Public Instruction, or the First Assistant Superintendent of Public Instruction if so designated by the Superintendent to serve in his place during his term of office as Superintendent, who shall be a member ex-officio, and one nonvoting student member from each college or university governed by the Board under this Act." (emphasis added.)

The power to appoint an alternate to serve on these aforementioned governmental agencies is inextricably tied to membership on the Board. After appointing the Superintendent of Public Instruction to membership on the Board, the statutes then authorize the Superintendent to appoint someone to serve in his place.

Since I am of the opinion that the State Board of Education has not been granted the statutory authority to succeed the Superintendent of Public Instruction as a member of these various governmental agencies, it follows that they may not exercise a power granted to the Superintendent of Public Instruction to designate an alternate to serve in his

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place as a member of the particular governmental agency.

Not all governmental bodies on which the Superintendent of Public Instruction served are covered explicitly herein, however, the principles enunciated should provide guidelines applicable to those other situations; if not, please let me know.

You are advised that there presently exists pending legislation in the General Assembly that would remove the Superintendent of Public Instruction as a member of the following bodies and replace him with the State Superintendent of Education:

- (1) School Study and Survey Commission
(House Bill 1107)
- (2) Board of Higher Education (House Bill
1554)

Very truly yours,

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