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FILE NO. S-878

**OFFICERS:**  
Application of the  
Illinois Purchasing Act.

Honorable James R. Washburn  
State Representative  
Minority Leader  
Room 2011  
State Office Building  
Springfield, Illinois 62706

Dear Representative Washburn:

This responds to your letter in which you state  
as follows:

By law, Illinois Legislators are authorized expenditures up to \$12,000 annually for a variety of purposes related to legislative responsibilities. Included are such services as rent, telephone and secretarial assistance in ones home office.

A legislator is a 'principal' employee in an incorporated professional practice. Also the legislator is an elected State Representative. His first responsibility is as an elected official and second, as an employee of the professional practice.

For the convenience of his constituents, he chose to let his professional office 'double' as

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a home district legislative office. He can NOT and does NOT charge the State of Illinois for use of these facilities.

For obvious reasons, his legislative office hours coincide with his regularly established professional office hours. This totals 53 1/2 hours per week, including 5 hours on each Saturday.

Ten full time employees of the professional practice perform all office and secretarial assistance normally found in such a professional office. Each full time employee at some time or other acts in a 'dual' capacity of performing services for the legislator, in addition to his or her regular duties. This includes routine secretarial services, telephone answering service, handling of constituent complaints and requests and numerous other services normally expected of an elected official in his home office.

One full time employee has been designated as the legislator's assistant. That employee's first responsibility is to perform those services necessary in the day to day operation of the legislators office. When not involved in performing the services required in the operation of the legislators office, the same employee performs tasks related directly to the legislators professional practice.

It is estimated that the legislative assistant devotes seventy percent (70%) of her time to fulfilling legislative assistant duties and thirty percent (30%) to responsibilities related to the professional practice. This estimate is based on a period of time covering a full two year term of the Illinois General Assembly.

The State Comptroller's Office cannot make the usual tax deductions from the pay of any legislative assistant under contract to the State of Illinois. The reason stated related to the manner

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in which funds for this purpose are appropriated.

To assure that all appropriate deductions were made and taxes paid, the legislator accepted the advice of the Certified Public Accountant employed by the professional practice.

The recommended and followed procedure saw the legislative assistant receive her regular bi-weekly check, after appropriate deductions for social security, federal withholding, state withholding and retirement program. It was paid by the professional practice with monies from a sundry account within the professional corporation books.

Periodically, the legislator submitted vouchers to the appropriate state agency for an amount, payable to the legislative assistant, and equal to approximately seventy percent (70%) of what the legislative assistant had earned over a given period of time.

The legislative assistant then endorsed the check and the total amount of the check was funneled back into the sundry account of the professional practice. This represented a 'wash out' of those dollars involved in payment for legislative assistant duties. This procedure is felt to be protection for all concerned, especially the legislator and his handling of public money."

You request my opinion as to whether the foregoing procedure is consistent with the Illinois Purchasing Act.

(Ill. Rev. Stat. 1973, ch. 127, pars. 132.1 et seq.)

Section 11.1 of the Act (Ill. Rev. Stat. 1973, ch. 127, par. 132.11-1) provides in pertinent part as follows:

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"§ 11.1 It is unlawful for any person \* \* \* holding a seat in the General Assembly \* \* \* to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper or for any services, materials or supplies, which will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois \* \* \* .

It is unlawful for any firm, partnership, association or corporation in which any such person is entitled to receive more than 7 1/2% of the total distributable income to have or acquire any such contract or direct pecuniary interest therein.

It is unlawful for any firm, partnership, association or corporation in which any such person together with his spouse or minor children is entitled to receive more than 15%, in the aggregate, of the total distributable income to have or acquire any such contract or direct pecuniary interest therein.

\* \* \*

The two exceptions provided in this section are not applicable to the situation about which you inquire.

The contract for personal services in question, which is between the State and the legislative assistant, is paid for by funds appropriated by the General Assembly. The question then is whether the legislator or the professional corporation with which he is associated and of which, I assume, he is a stockholder, has a direct interest in the

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contract. The warrant is endorsed by the legislative assistant and turned over to the professional corporation, not the legislator. The legislator thus does not have a direct pecuniary interest in the contract unless stock ownership in the corporation puts him in such a position. The section of the Illinois Purchasing Act under consideration is the successor to section 12 of "AN ACT to revise the law in relation to State contracts (1959 Laws 1237, now repealed), and is similar to it. In interpreting that section in The People v. Isaacs, 37 Ill. 2d 205, the Supreme Court held that stock ownership in a corporation did not constitute a direct pecuniary interest. The legislator thus does not have a direct pecuniary interest in the contract.

However, the professional corporation does. This is so because by the terms of the legislative assistant's employment contract with the professional corporation, all the monies she receives from the State are directly turned over to the professional corporation. If the legislator is entitled to receive more than 7 1/2% of the total distributable income of that corporation, the procedure would be in violation of the Act.

While the procedure followed by the professional corporation in paying the legislative assistant may be fair

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and reasonable to all parties concerned, the prohibitions of the Act are absolute. See in this regard opinion No. 553 of my predecessor, issued February 2, 1959. (1959 Op. Atty. Gen. 37.) In that opinion he advised that for a member of the General Assembly to receive payments from the State of Illinois for professional services rendered recipients of Old Age Assistance, Blind Assistance, disability assistance or aid to dependent children under the Illinois Public Aid Commission's medical assistance program, would be in violation of section 12 of "AN ACT to revise the law in relation to State contracts", supra. This was so even if he were providing the only medical services available in the community.

No exception to the Illinois Purchasing Act, supra, is provided by "AN ACT in relation to compensation and emoluments of members of the General Assembly" (Ill. Rev. Stat. 1973, ch. 63, pars. 14 et seq.), which provides the authorization for expenditure of public funds on behalf of members maintaining home offices. Section 4 of that Act (Ill. Rev. Stat. 1973, ch. 63, par. 15.1) reads as follows:

"§ 4. From appropriations made, respectively, to the President of the Senate and the Speaker of the House of Representatives for the furnishing of legislative staff, secretarial, clerical, research, technical, telephone, other utility services,

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stationery, postage, office equipment rental and office rental costs to members of their respective houses throughout the year in connection with their legislative duties and responsibilities and not in connection with any political campaign, each member is authorized to approve the expenditure of not more than \$10,000 per year. No authorization by any member of the General Assembly shall be made for any person who is the spouse, parent, grandparent, child, grandchild, aunt, uncle, niece, nephew, brother, sister, first cousin, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law of the member authorizing payment. Payments for office rental costs shall be made payable directly to the landlord who shall not be related to the member authorizing payment. Payments from the amounts appropriated for the purposes of this Section shall be made only upon delivery of a voucher approved by the member to the Comptroller. The voucher shall also be approved by the President of the Senate or the Speaker of the House of Representatives as the case may be.

From any appropriation for the purposes of this Section for a fiscal year which overlaps 2 General Assemblies, no more than 1/2 of the annual allowance per member may be encumbered by any member of either the outgoing or incoming General Assembly."

This section only authorizes a member to approve the expenditures of funds. While it may not explicitly prohibit him or his firm from receiving such funds directly or from having a direct interest in them, it does not authorize it either.

I, therefore, am of the opinion that the Illinois Purchasing Act is controlling and that the procedure under consideration is not in accordance with said Act.

Very truly yours,

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