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April 7, 1977

FILE NO. S-1225

STATE EMPLOYEES:
Participation By Employees
of the St. Louis Metropolitan Area
Airport Authority in a Deferred
Compensation Plan

Arven H. Saunders
Executive Director
St. Louis Metropolitan Area Airport Authority
S.I.U. Campus
Edwardsville, Illinois 62025

Dear Mr. Saunders:

I have your letter wherein you ask whether employees of the St. Louis Metropolitan Area Airport Authority are employees of the State of Illinois and whether they would cease to be employees should the authorized Greater St. Louis Metropolitan Area Airport Commission be created. You also ask whether such employees may participate in a deferred compensation plan other than the State deferred compensation plan, and what consequences could be foreseen for employees participating in the State plan should the creation of the

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commission result in a termination of their employment relationship with the State. For the reasons hereinafter stated, it is my opinion that St. Louis Metropolitan Area Airport Authority employees are employees of the State and that, if they wish to participate in a deferred compensation plan, it must be the State plan.

It is not possible to answer your questions regarding the status of Authority employees should the Greater St. Louis Metropolitan Area Airport Commission be created, and the effect the creation of that commission would have on participation by the employees of the Authority in the State deferred compensation plan. Any change in the status of the Authority is wholly contingent upon the negotiation of an agreement with some Missouri governmental entity, an agreement which could conceivably never come into existence and of which the relevant terms cannot now be ascertained. (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 310.) I shall, therefore, not be able to answer those questions.

The St. Louis Metropolitan Area Airport Authority was created by the St. Louis Metropolitan Area Airport Authority Act. (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 301 et seq.) That Act authorized the Authority to employ agents and employees to carry out the duties and purposes of the

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Authority. (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 312.)
The employees of the Authority are members of the State Employees' Retirement System and are paid by the Authority from an appropriation from the General Assembly. Ill. Rev. Stat. 1975, ch. 108 1/2, pars. 14-101, 14-102, 14-107 and 14-108; P.A. 79-2191.

Under the express terms of the Act the Authority is clearly a State agency. Section 4 of the Act provides that all the members of the Authority are to be chosen by the Governor with the advice and consent of the Senate, and section 5a makes the Attorney General the legal adviser and representative of the Authority. In addition, section 4c(16) of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b104c(16)) refers to employees of the Authority as persons in State service. Therefore, for the reasons set forth above, it is my opinion that the Authority is a State agency and that its employees are State employees.

A deferred compensation program for public employees is authorized by article 24 of the Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 24-101 et seq.). Contracts to defer compensation are authorized by sections 24-101, 24-104 and 24-105 of the Pension Code (Ill. Rev. Stat. 1976 Supp.,

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ch. 108 1/2, par. 24-101, 24-104 and 24-105) which provide in pertinent part as follows:

"§ 24-101. Notwithstanding any law to the contrary, the State of Illinois or any unit of local government or school district may enter into a written contract with any of its employees to defer the whole or any part of their gross compensation and may invest such funds in any such manner as prescribed by the deferred compensation program adopted by it under this Article." (Emphasis added.)

"§ 24-104. The Illinois State Board of Investment created under Article 22A of this Act shall develop and establish a deferred compensation plan for employees of the State which shall be known as the State Employees Deferred Compensation Plan. The Plan shall provide for the Board to review proposed investment offerings and shall require that only investments determined to be acceptable by the Board may be used for investing compensation deferred.

* * *

"§ 24-105. The State Employees Deferred Compensation Plan shall be administered by the Department of Personnel subject to the general supervision of the Illinois State Board of Investment. Participation in such plan shall be by a specific written agreement between each such employee and the State which agreement shall provide for the deferral of such amount of compensation as requested by the employee. * * * "

The State, as employer, is authorized to formulate its own plan and to contract with its employees to defer future compensation. Participation by an employee in a plan other

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than the State plan would necessitate a contract between the State, as employer, and the operator of the plan and a contract between the State, as employer, and the employee. A contract between the State and the operator of another deferred compensation plan is not authorized. Although section 24-107 of the Pension Code (Ill. Rev. Stat. 1976 Supp., ch. 108 1/2, par. 24-107) grants broad powers to units of local government in connection with the establishment of deferred compensation plans, State agencies are not given such powers. Therefore, it is my opinion that it would not be possible for employees of the Authority to participate in any deferred compensation plan other than the State Employees' Deferred Compensation Plan.

As I have stated, I am unable to determine now what consequences the creation of the Commission in the future would have in regard to the employees of the Authority. I have examined pertinent provisions of the Illinois deferred compensation plan drafted by the State Board of Investment pursuant to section 24-104 of the Pension Code (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 24-104). The application of sections 2.1(n) and 3.7 of that plan, which relate to termination of services, might result in immediate taxation

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of the deferred compensation should the Commission be created and the employees of the Authority then cease to be employees of the State.

Very truly yours,

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