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FILE NO. S-913

**OFFICERS:**

State Board of Education -  
Commencement of Their Term  
of Office

Jack Witkowsky  
Chairman  
State Board of Education  
188 W. Randolph  
Chicago, Illinois 60601

Dear Mr. Witkowsky:

I have your letter, pertaining to the commencement of the terms of office of members of the State Board of Education, wherein you state in pertinent part:

" \* \* \*

1. From what point in time are the terms of the board members computed?
  - a. From the date of their appointment by the Governor.
  - b. From the date of their confirmation by the Senate.

Jack Witkowsky - 2.

c. From January 1, 1974, when the Board began its advisory capacity.

d. From January 13, 1975 (the termination of the term of the constitutionally elected Superintendent of Public Instruction)."

As a general rule, where an appointment is made as a result of a nomination by one authority and confirmation by another, the appointment is not valid and complete until the action of all bodies concerned has been taken. People ex rel. Widell v. Welsh, 260 Ill. 532, 535; People ex rel. McDougall v. O'Toole, 164 Ill. 344, 350; People ex rel. Warren v. Christian, 123 P. 2d 368, 371 (Wyo. 1942); Schulte v. City of Jefferson, 273 S.W. 170, 172 (Mo. 1925); 1957 Ill. Att'y. Gen. Op. 67, 71; 67 C.J.S., Officers, sec. 32, p. 160.

Members of the State Board of Education are appointed by the Governor with the advice and consent of the Senate. (Ill. Rev. Stat. 1973, ch. 122, par. 1A-1.) As such, nomination by the Governor does not complete the appointment to the office of member of the State Board of Education and, therefore, the date of nomination by the Governor could

Jack Witkowsky - 3.

not possibly be the date for commencement of the term for such office.

It should be remembered that a term of office does not necessarily begin from the date of appointment, but from the time fixed by the General Assembly for it to begin. Bruce v. Matlock, 111 S.W. 990, 991 (Ark. 1908); see, also, People ex rel. Holdom v. Sweitzer, 280 Ill. 436, 445.

Section 2 of article X of the Illinois Constitution of 1970 creates the State Board of Education and authorizes the Board to appoint a chief State educational officer. Said section 2 reads as follows:

"(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer."

In response to section 2(a) of article X, the General Assembly added article 1A to the School Code. (Ill. Rev. Stat. 1973, ch. 122, pars. 1A-1 et seq.) Generally

Jack Witkowsky - 4.

speaking, article 1A pertains to the selection of members to serve on the State Board of Education, their terms of office, their qualifications and the powers and duties of the State Board of Education. Specifically, section 1A-1 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-1) pertains to the selection of members to serve on the State Board of Education and their terms of office. Section 1A-1 reads as follows:

"§ 1A-1. Members and terms. On or before January 1, 1974 the members of the State Board of Education shall be appointed by the Governor with the advice and consent of the Senate. The State Board of Education shall consist of 17 members appointed from a pattern of regional representation which is defined as an area identical with each of the 5 judicial districts as established by the State of Illinois. Eight appointees shall be selected from the First Judicial District, 4 of whom shall be residents of the City of Chicago and 4 of whom shall be residents of that part of Cook County which lies outside the city limits of Chicago, and 2 appointees shall be selected from each of the 4 other judicial districts and one member shall be selected as a member-at-large. At no time may more than 9 members of the Board be from one political party. Party membership is defined as having voted in the primary of the party in the last primary before appointment preceding the previous general election. The 8 members initially appointed from the First Judicial District shall draw lots to determine which 2 shall serve 6 year terms, which 3 shall serve 4 year terms and which 3 shall serve 2 year terms. The mem-

Jack Witkowsky - 5.

bers initially appointed from judicial districts 2 through 5 shall draw lots to determine which member from each district shall serve 6 year terms and the remaining members from districts 2 through 5 shall draw lots so that 2 serve 4 year terms and 2 serve 2 year terms. The member-at-large shall serve a 4 year term the first time appointed. Vacancies in terms shall be filled by appointment by the Governor with the advice and consent of the Senate for the extent of the unexpired term.

After the original terms, all terms shall be for 6 years."

Although section 1A-1 provides that on or before January 1, 1974, the members of the State Board of Education shall be appointed by the Governor by and with the advice and consent of the Senate, it does not in and of itself provide for the commencement of the terms of office of members of the State Board of Education. Merely, providing that members of the Board shall be appointed by and with the advice and consent of the Senate on or before January 1, 1974, is not a legislative declaration that the term of office of members of the board shall commence on January 1, 1974.

Section 1A-1 of the School Code provides that the initial appointees to the Board shall draw lots to determine which members shall serve two year terms, four year terms and

Jack Witkowsky - 6.

six year terms. Of the 17 original members appointed to the Board, six may serve six year terms, six may serve four year terms and five may serve two year terms. At the expiration of these original terms of office all terms shall be for six years. Obviously, the intent of such a plan for staggering the initial terms of office was to arrange for the expiration of the terms of office of approximately one-third of the membership of the Board to occur every two years. It is only reasonable that the commencement date and therefore the expiration date of the terms of office of the members of the Board would be uniform. If the members of the Board had their terms begin at different times, this would be contrary to the legislative intent embodied in providing for the staggering of the initial terms of office. A uniform date upon which the terms of office of members of the State Board of Education shall commence will obviously be easier to administer. The Governor will know when the terms of office will expire and can prepare for the nomination of persons to the office.

Jack Witkowsky - 7.

Thirteen members of the State Board of Education were confirmed by the Senate on June 20, 1974, (Illinois State Senate Journal, No. 137, June 20, 1974, pp. 15, 26) and one member was confirmed on June 25, 1974. (Illinois State Senate Journal, No. 142, June 25, 1974, p. 43.) Three positions on the Board have never been filled. To hold that confirmation by the Senate is the date upon which the term of office begins would be in conflict with the intent of the legislature that the terms of office of approximately one-third of the members of the Board shall expire every two years.

Section 1A-3 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-3) pertains to the powers and duties of the State Board of Education. Said section 1A-3 reads:

"§ 1A-3. Powers and duties. The State Board of Education shall assume full powers and duties after initial appointment upon the expiration of the term of the State Superintendent of Public Instruction elected in 1970. During the period from initial appointment to the assumption of full duties and authority, the State Board of Education shall function in an advisory capacity to and with the current constitutionally established office of State Superintendent of Public Instruction. During this period they shall be given full

Jack Witkowsky - 8.

access to all such information records and staff as shall be reasonably necessary for understanding and planning their work when they shall assume full function as specified above. They shall, during this period, take necessary and appropriate action to interview and plan for appointment of a chief executive officer to be designated as State Superintendent of Education at the end of the term of the Superintendent of Public Instruction elected in 1970. If a vacancy occurs in the office prior to January 13, 1975, the Board shall appoint a successor."

Of critical importance in resolving your question is to understand the full impact of the first sentence of section 1A-3 which provides that the State Board of Education shall "assume full powers and duties after initial appointment upon the expiration of the term of the State Superintendent of Public Instruction elected in 1970." This sentence must be read in conjunction with section 2(a) of article X which directly grants the Board the power to establish goals, determine policies, provide for the planning and evaluating of education programs, and recommend financing; however, section 2(a) also provides that these powers may be limited by law. Section 1A-3 in stating that the State Board of Education shall not assume full powers and duties until the expiration of the term of Superintendent of Public Instruction



Jack Witkowsky - 9.

is limiting the powers granted to the Board by section 2(a) of article X. Furthermore, section 1A-3 states that the Board shall act in a purely advisory capacity during the period from initial appointment until the expiration of the term of the Superintendent of Public Instruction.

The office of Superintendent of Public Instruction was eliminated from the Constitution of 1970; however, the Superintendent, elected in 1970, was allowed to finish his term, which expired on January 13, 1975. Section 1A-4 of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4) grants additional powers and duties to the State Board of Education. The first sentence of paragraph C of section 1A-4 provides: "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." If the State Board of Education had been appointed by January 1, 1974, the State Board of Education would have had approximately one year to plan for the assumption of its constitutional powers and duties plus the powers and duties of the Superintendent

Jack Witkowsky - 10.

of Public Instruction. In actuality, it should be noted, the Governor did not nominate anyone to the office of member of the State Board of Education until April 11, 1974, and the Senate did not confirm anyone until June 20, 1974. It is clear, however, that the object and purpose of the January 1, 1974, deadline was to give the State Board of Education time to prepare for assuming these powers and duties, and to interview and plan for the selection of a chief State educational officer as is required by section 2(b) of article X and section 1A-3 and section 1A-4B of the School Code. I am of the opinion that the General Assembly did not intend January 1, 1974, to be the date upon which the terms of office of the original members of the Board shall commence.

As mentioned earlier, in requiring that the State Board of Education shall not assume full powers and duties until January 13, 1975, the date upon which the term of the Superintendent of Public Instruction expired, the General Assembly was limiting the constitutional powers and duties of the State Board of Education. The constitutional powers of the Board were to remain dormant until January 13, 1975. It was specifically provided that during this period from

Jack Witkowsky - 11.

initial appointment until January 13, 1975, the Board was to act in an advisory capacity to and with the Superintendent of Public Instruction. That the Board was without substantial powers until January 13, 1975, is further illustrated by paragraph E of section 1A-4 (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4E) which requires the Board to prepare and submit to the General Assembly and the Governor a report of its findings and recommendations within one year of the date of assuming full duties. Thus, the Board was not even empowered to make reports to the General Assembly and the Governor until after January 13, 1975.

An indispensable element of a public office, as distinguished from an employment, is that the duties of the incumbent of an office shall involve an exercise of some portion of the sovereign power. People v. Brady, 302 Ill. 576, 582; Olson v. Scully, 296 Ill. 418, 421; Martin v. Smith, 239 Wisc. 314, 332, 1 N.W. 2d 163, 172 (1941); Parker v. Riley, 18 Cal. 2d 83, 87, 113 P. 2d 873, 875 (1941); State ex rel. Green v. Glenn, 39 Del. 584, 587, 4 A. 2d 366, 367 (1939); State ex rel. Barney v. Hawkins, 79 Mont. 506, 528, 257 P. 411, 418 (1927); 53 A.L.R. 595, 602; 140 A.L.R. 1076,

Jack Witkowsky - 12.

1081.

In People v. Brady, 302 Ill. 576, the Illinois Supreme Court held that committeemen of political parties were not public officers. The court placed strong emphasis on the notion that a person must exercise some portion of State sovereignty to be a public officer. At page 582, the court states:

"\* \* \* The most important characteristic of an office is that it involves a delegation to the officer of some of the solemn functions of government to be exercised by him for the benefit of the public. Some portion of the sovereignty of the State, either legislative, executive or judicial, attaches for the time being to the officer, to be exercised for the public benefit. Unless the powers conferred by the act creating the office are of this nature the individual filling the office is not a public officer."

The State Board of Education did not possess any sovereign powers until January 13, 1975. The Board was given the power to appoint a Superintendent of Public Instruction in case a vacancy occurred in this office prior to January 13, 1975. (Ill. Rev. Stat. 1973, ch. 122, par. 1A-3.) However, section 7 of the Transition Schedule of the Illinois Constitution of 1970 indicates that this power was contingent upon the occurrence of a vacancy. Said section 7 reads:

Jack Witkowsky - 13.

"Section 2(b) of Article X shall take effect upon the existence of a vacancy in the Office of Superintendent of Public Instruction but no later than the end of the term of the Superintendent of Public Instruction elected in 1970."

Pursuant to section 7 of the Transition Schedule, section 2(b) of article X, which authorized the State Board of Education to appoint a chief State educational officer, was not effective until January 13, 1975. The power to fill a vacancy in the office of the Superintendent of Public Instruction was always contingent and therefore the State Board of Education never fully possessed the power to fill the vacancy. As such, the State Board of Education never possessed any sovereign powers until January 13, 1975.

Reading article 1A of the School Code as a whole, I am of the opinion that the State Board of Education did not assume full powers and duties until January 13, 1975. As such, the Board could not exercise any part of the State's sovereign power until this date. Once sovereign powers were instilled in the Board, membership on the Board ripened into a public office. Since the statutory design of article 1A

Jack Witkowsky - 14.

called for the appointment of the members of the Board by January 1, 1974, it is evident that once the position of Board member ripened into a public office the term of that office automatically began. In direct answer to your question, terms of members of the Board are to be computed from January 13, 1975.

Very truly yours,

A T T O R N E Y   G E N E R A L