



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
500 SOUTH SECOND STREET  
SPRINGFIELD

October 30, 1973

FILE NO. S-643

**APPROPRIATIONS:**

Transfer of funds among line item appropriations and payment of wages for overtime accrued by State employees during the fiscal year.

Honorable George W. Lindberg  
Comptroller  
State of Illinois  
201 State House  
Springfield, Illinois 62706

Dear Comptroller Lindberg:

Receipt of your recent letter with enclosures is acknowledged.

In that letter, you asked my opinion on certain proposed "amendments" to line item transfers within the budget provided for the Department of Corrections by Public Act 77-2012. Your question is how such re-transfer among line items within

Honorable George W. Lindberg - 2.

the fiscal year would be treated under the 2% limit on transfers set by section 13.2 of "An Act in relation to State finance", approved June 10, 1917, as amended, Ill. Rev. Stat. 1972 Supp., ch. 127, par. 149.2.

Section 13.2 provides inter alia:

"Transfers among line item appropriations from the same treasury fund for the objects specified in this Section may be made in the manner provided in this Section when the balance remaining in one or more such line item appropriations is insufficient for the purpose for which the appropriation was made. No transfers may be made from one agency to another agency, nor may transfers be made from one institution of higher education to another institution of higher education. Transfers may be made only among the objects of expenditure enumerated in this section, except that no funds may be transferred from any appropriation for personal services. The sum of such transfers for an agency in a fiscal year shall not exceed 2% of the aggregate amount appropriated to it within the same treasury fund for the following objects: Personal Services; Extra Help; Student and Inmate Compensation; State Contributions to Retirement Systems; State Contributions to Social Security; Contractual Services; Travel; Commodities; Printing; Equipment; Electronic Data Processing; Operation of Automotive Equipment; Telecommunications Services; Library Books; Federal Matching Grants for Student Loans; Refunds; Workmen's Compensation, Occupational Disease, and Tort Claims; and, in appropriations to institutions of higher education, Awards and Grants. \* \* \*

Honorable George W. Lindberg - 3.

There are two possible interpretations of this section which could be best explained by use of the following example: Assume a 2% limit on transfers of \$25,000. On May 1, \$25,000 is transferred from line item A to line item B. On June 30, \$10,000 is transferred from line item B to line item C.

One interpretation would look at the amount of each transfer as it is made. Under this view there would be a total transfer of \$35,000 in the example. Once transfers equaling 2% of the aggregate amount appropriated for the specified objects have been made, no further transfers would be allowed.

The other interpretation would compare the expenditure at the end of the fiscal year with the appropriation as it originally became law. Under this view there would be a total transfer of \$25,000 in the example and if the end result is within the 2% limit set by the statute, the transfers are proper and there would be no need to consider the number of steps used to reach the final result.

The primary object of statutory construction is to determine and give effect to the legislative intention. (People ex rel. Kucharski v. Adams, 48 Ill. 2d 540; Certain Taxpayers v.

Honorable George W. Lindberg - 4.

Sheahan, 45 Ill. 2d 75). The intention of the legislature is to be gathered not only from the language used in the statute, but also from the reasons for enactment and the purposes to be attained. People ex rel. Cason v. Ring, 41 Ill. 2d 305; Illinois National Bank v. Chegin, 35 Ill. 2d 375.

In construing a statute, it is presumed that when the General Assembly amends a statute, it intends to change the existing law. (Lindley v. Murphy, 387 Ill. 506; Quinn v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago, 7 Ill. App. 3d 791). It appears that prior to the enactment of section 13.2 by Public Act 76-2412, agencies and departments of the State government had no flexibility in control of their budgets. With any minor change of circumstances or unexpected expense, budgets could be thrown out of line even though the total appropriation contained enough funds to carry out the purposes and objectives of the General Assembly. Agencies and departments were forced to go through the complete legislative process in order to make minor readjustments in their budgets. This necessity was not conducive to efficient management in state government and it added unnecessary legislation to the crowded calendar of the General Assembly.

Honorable George W. Lindberg - 5.

In order to remedy this situation, the General Assembly enacted Public Act 76-2412. It appears that within the prescribed limits and procedures, the General Assembly intended to give the State agencies and departments the budget flexibility needed to meet changes of circumstances during the fiscal year. The General Assembly also wished to eliminate the need for legislative action for minor budget readjustments.

That part of section 13.2 which states:

"\* \* \* the sum of such transfers within the fiscal year shall not exceed 2% of the aggregate amount appropriated to it within the same treasury fund for the following objects:  
\* \* \*"

should be interpreted in a manner that will accomplish the object of its enactment. Herrington v. Peoria County, (Ill. App. 1973) 295 N.E. 2d 729.

It is my opinion that in order to carry out the intention of the General Assembly under section 13.2, the appropriation as it originally became law should be compared with the appropriation as it stands at the end of the fiscal year. If the end result is within the 2% limit set by the statute, the line item transfers are proper. As long as such transfers

Honorable George W. Lindberg - 6.

are within the statutory limit, it is unnecessary to consider the number of steps taken to reach the end result.

In your letter, you also state:

"We are informed that amongst the obligations to be paid by funds so transferred is overtime wages for work already performed and for which the basic wages have been paid. There is no union contract covering this transaction."

You apparently asked my opinion on whether this payment of overtime wages would violate section 9 of "An Act in relation to State finance", approved June 10, 1919 as amended. Ill. Rev. Stat. 1972 Supp., ch. 127, par. 145.

As I understand the situation, certain employees of the Department of Corrections performed duties in addition to their normal work schedule at the request of their supervisors. These employees were promised compensatory time off or cash payment if time off could not be arranged before the end of the fiscal year. The employees involved are certified under the Personnel Code.

The pertinent part of section 9 states:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall

Honorable George W. Lindberg - 7.

be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed." (Emphasis supplied.)

The Court of Claims has repeatedly held that where a State employee accepts his regular salary warrant, the salary warrant shall be considered full payment for all services rendered between the dates specified on the voucher. No additional compensation should be paid. (Shields v. State, 14 C.C.R. 136, Hollender v. State, 14 C.C.R. 40). On the same grounds, the Court denied the claim of an employee of the Illinois State Reformatory for overtime work performed at the direction of his superiors. Schoenig v. State, 11 C.C.R. 634.

But the facts of the present situation can be distinguished from holding of the Court of Claims. The employees

Honorable George W. Lindberg - 8.

affected are appointed under the Personnel Code. Their right to compensation for overtime work is set by rules prescribed by the Director of the Department of Personnel. (Ill. Rev. Stat. 1971, ch. 127, par. 63b108a.) These rules have the effect of law. (Ill. Rev. Stat. 1971, ch. 127, par. 63b108.) Under these rules, employees are to be given compensatory time off or cash payment if compensatory time off is not liquidated during the fiscal year accrued. Pay Plan, effective Sept. 1, 1972, sec. 11, par. c.

Section 9 and rules adopted under the Personnel Code should not be construed inconsistently if it is possible to construe them otherwise. People ex rel. Little v. Peoria and E. Ry. Co., 383 Ill. 79.

It is my opinion that cash payment for the unliquidated overtime would not "in effect" be additional compensation for work already performed. Rather it should be viewed simply as compensation for work performed.

Very truly yours,

A T T O R N E Y   G E N E R A L