



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

**June 29, 1978**

**FILE NO. S-1370**

**STATE EMPLOYEES:  
Coverage of Illinois Arts  
Council Employees Under  
the Personnel Code**

**Honorable Robert G. Cronson  
Auditor General  
State of Illinois  
524 South Second Street  
Springfield, Illinois 62706**

**Dear Mr. Cronson:**

I have received your letter requesting my opinion as to whether or not the Illinois Arts Council is subject to the Personnel Code. (Ill. Rev. Stat. 1977, ch. 127, par. 63b101 et seq.)

You state that the Council, in support of its position that it is not subject to the Personnel Code, relies on a letter from the Department of Personnel dated November 7, 1977. The letter, in turn, relies on section 6 of "AN ACT

Honorable Robert G. Cronson - 2.

creating the Illinois Arts Council, Etc." (Ill. Rev. Stat. 1977, ch. 127, par. 214.16; hereinafter referred to as the Arts Council Act) which provides:

"The Council may employ an executive director, a secretary and such clerical, technical and other employees and assistants as it considers necessary for the proper transaction of its business."

The letter states, in part:

" \* \* \* Chapter 127, Section 214.16, empowers the Council to employ its own staff. A reasonable interpretation of this language would indicate since the legislature empowered the Council to employ, it would follow the Council has the authority to fix their term of employment. This then effectively excludes such employees from the jurisdiction of the Personnel Code."

Section 4 of the Personnel Code (Ill. Rev. Stat. 1977, ch. 127, par. 63b104) provides that:

"All offices and positions of employment in the service of the State of Illinois shall be subject to the provisions of this Act unless specifically exempted in this Act." (Emphasis added.)

The Personnel Code contains a number of explicit exemptions. It is conceded that the Illinois Arts Council does not fit within any of them. Thus, unless section 6 of the Arts Council Act constitutes an implied amendment to section 4,

Honorable Robert G. Cronson - 3.

Illinois Arts Council employees are covered by the Personnel Code.

The courts do not favor implied amendments.

(Illinois Central R.R. Co. v. Franklin County (1944), 387 Ill. 301.) If there is any doubt, courts will not find an implied amendment. (1A Sutherland Statutory Construction (4th ed.) 139.) In People ex rel. Coffman v. Illinois Central R.R. Co. (1924), 314 Ill. 339, the court, at page 342, states:

" \* \* \* [A] repeal or amendment by implication can only occur where the terms of the later statute are so repugnant to the earlier that both cannot stand. \* \* \* "

There are three jurisdictional categories under the Personnel Code. Applying the principles of statutory construction set out above, employees of the Illinois Arts Council are covered under all three jurisdictional classifications unless such coverage cannot be reconciled with the language of section 6 of the Arts Council Act.

Under section 8a of the Personnel Code (Ill. Rev. Stat. 1977, ch. 127, par. 63b108a), employees covered under Jurisdiction A are subject to a position classification plan based upon similarity of duties performed, responsibilities assigned, and conditions of employment. The same schedule of pay is applied to all positions in the same class.

Honorable Robert G. Cronson - 4.

There is nothing in section 6 which conflicts with this principle, and therefore Illinois Arts Council employees are subject to Jurisdiction A.

Sections 8b.1 through 8b.17 of the Personnel Code (Ill. Rev. Stat. 1977, ch. 127, pars. 63b108b.1 - 63b108b.17) specify the matters encompassed within Jurisdiction B. These sections authorize competitive examinations which are used in the compilation of eligibility lists which rank applicants for positions. Normally, the person who is appointed to the position must be among the three highest ranking applicants on the appropriate eligibility list. Non-probationary employees covered under Jurisdiction B may only be dismissed for cause, after a hearing, and with the prior approval of the Director of Personnel.

In Black's Law Dictionary (4th ed. 1968) at page 617, the word "employ" is defined as follows:

"To engage in one's service; to use as an agent or substitute in transacting business; to commission and intrust with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for a compensation, and has but this one meaning when used in the ordinary affairs and business of life. \* \* \*"

While in some instances the term "employ" might imply an

Honorable Robert G. Cronson - 5.

authority to fix the term of employment, there is no indication that the legislature used the term "employ" in this sense in section 6 of the Arts Council Act. Since the ordinary meaning of the term "employ" is perfectly consistent with the constraints on hiring and firing imposed by Jurisdiction B, there is no unavoidable irreconcilability. Therefore, employees of the Illinois Arts Council are subject to Jurisdiction B.

Under section 8c of the Personnel Code (Ill. Rev. Stat. 1977, ch. 127, par. 63b108c), employees subject to Jurisdiction C are entitled to holidays, sick leave, overtime pay, etc. in accordance with regulations promulgated by the Department of Personnel. Here, again, these constraints on the power of the Illinois Arts Council are not irreconcilable with a grant of power to "employ".

Employees of the Illinois Arts Council are, therefore, subject to Jurisdictions A, B and C of the Personnel Code.

This conclusion is strengthened by the practice of the General Assembly of explicitly excluding certain employees from the Personnel Code. For example, under section 6 of the Illinois Bicentennial Commission Act (Ill. Rev. Stat. 1977, ch. 127, par. 214.26):

Honorable Robert G. Cronson - 6.

"The Commission may, without regard to the Personnel Code, employ and fix the compensation of necessary administrative, research, secretarial, stenographic and clerical personnel. \* \* \* "  
(Emphasis added.)

Under section 2-10 of the Illinois State Auditing Act (Ill. Rev. Stat. 1977, ch. 15, par. 302-10):

"(a) The Auditor General may hire employees as may be necessary and appropriate to carry out his duties. Employees of the Auditor General shall not be subject to the Personnel Code.

\* \* \*

(Emphasis added.)

The November 7, 1977, letter from the Director of the Department of Personnel also emphasizes the fact that the Illinois Arts Council reports jointly to the Governor and the General Assembly. There appears to be no irreconcilability between such a reporting requirement, and the coverage of Council employees under the Personnel Code.

The purpose of the Personnel Code is to establish a system of personnel administration based on merit principles and scientific methods. Section 4 of the Code makes it clear that the intent of the legislature is for these principles to apply to all employees, with certain limited, specific exceptions. When the legislature has decided to create exceptions from the Personnel Code, it has done so in explicit

**Honorable Robert G. Cronson - 7.**

**and unambiguous terms. Since no provision in the Arts Council Act is irreconcilable with the provisions of the Personnel Code, it is my opinion that Illinois Arts Council employees are covered by the Personnel Code.**

**Very truly yours,**

**A T T O R N E Y   G E N E R A L**