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FILE NO. 92-011

UNIVERSITIES AND COLLEGES:
Authority of Illinois
Community College Board

Cary A. Israel
Executive Director
Illinois Community College Board
509 South Sixth Street, Room 400
Springfield, Illinois 62701-1874

Dear Mr. Israel:

I have your letter wherein you inquire, firstly, whether the Illinois Community College Board (hereinafter "ICCB") is authorized to limit or suspend the expenditure authority of a community college board of trustees which has been charged with financial mismanagement, and, secondly, whether the ICCB is empowered to approve or disapprove the budget proposed by the board of trustees of the State Community College of East St. Louis. For the reasons which follow, it is my opinion that the ICCB has no power generally to limit the

spending authority of trustees of regularly organized community colleges. With respect to your second question, it is my opinion that the ICCB is authorized to approve, disapprove or modify the annual budget proposed by the State Community College.

The powers and duties of the ICCB are found in the provisions of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 101-1 et seq.). Section 2-12 of that Act (Ill. Rev. Stat. 1991, ch. 122, par. 102-12) grants the ICCB broad authority for statewide planning and coordination of community colleges and their programs, for the establishment of new community colleges and new courses of instruction within existing institutions, for the development of various standards and guidelines and for the approval of locally funded capital projects. None of these provisions, however, grants the ICCB general supervisory authority over the expenditures made by regularly organized community college boards (as distinguished from the State Community College of East St. Louis, which is discussed below).

The budgeting process for community college boards is set forth in sections 3-20 through 3-20.10 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, pars. 103-20 - 103-20.10). There is no statutory authorization for the ICCB to participate in, to limit or to control that process. Once the ICCB has approved the establishment of an

institution, the construction of facilities, the units of instruction and the research and public services to be provided by a community college, the proper budgeting and use of funds is the responsibility of the community college board of trustees, who in turn are responsible to the voters who elect them.

An administrative agency, such as the ICCB, may exercise no greater powers than those which are conferred upon it by the legislative enactment which created it. (Lombard v. Pollution Control Board (1977), 66 Ill. 2d 503, 506; People ex rel. Polen v. Hoehler (1950), 405 Ill. 322.) Since the ICCB has not been granted the express power to supervise or exercise power over the expenditures of community college boards, it is my opinion that the board of trustees of each district possesses the exclusive authority to determine the proper use and expenditure of the district's funds.

Your second question relates to the budget of the State Community College of East St. Louis (hereinafter "SCC"). SCC is an experimental community college district organized pursuant to article 4 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 104-1 et seq.) which, unlike other community college districts, is funded by direct State appropriations. The SCC board of trustees is appointed by the Governor, and its powers and duties are more strictly defined by statute than are those of other community college boards. (Ill. Rev. Stat. 1991, ch. 122, par. 104-3, 104-6.)

Pursuant to section 4-6 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, par. 104-6), the SCC board of trustees does not have the authority, granted to other community college districts by section 3-20 of the Act, to adopt an annual budget. Rather, section 4-6 provides that it is the duty of the SCC board:

" * * *

(b) To submit its budget proposals for the operation and capital needs to the State Board by the date specified each year for the following fiscal year. Such budget proposals shall include all projected revenues and expenditures from all sources.

* * * "

The term "State Board" in section 4-6 refers to the ICCB. (Ill. Rev. Stat. 1991, ch. 122, par. 102-1.) Section 4-7 of the Act (Ill. Rev. Stat. 1991, ch. 122, par. 104-7) provides that the ICCB shall:

" * * *

(g) Submit to the Illinois Board of Higher Education its analysis and recommendations on operating budget proposals for the experimental college after receiving the recommendations of the experimental district board. The State Board in the analysis of formulating its annual budget request for the experimental district shall consider all sources of revenue and expenditures. In accordance with this analysis, the State Board shall, on a monthly basis, receive a statement of revenues and expenditures for all funds prepared by the experimental district Board of Trustees. The State Board shall also review and approve any change in the budget for the experimental district after submission of such changes by the experimental district Board of Trustees in accord-

ance with regulations prescribed by the State Board.

* * *

(Emphasis added.)

Under section 4-6, the SCC board submits a budget proposal to the ICCB, which in turn submits an annual budget request for SCC to the Board of Higher Education. The Board of Higher Education submits the proposed budget, like those of State universities, to the Governor and the General Assembly. (Ill. Rev. Stat. 1991, ch. 144, par. 188.) The spending authority of SCC is subject to the appropriation of funds by the General Assembly.

Section 4-6 of the Act requires the ICCB not only to submit its analysis and recommendations to the Board of Higher Education, but also to formulate "its annual budget request" for SCC. This language contemplates that the ICCB will not merely analyze SCC's proposed budget and make recommendations thereon to the Board of Higher Education, but will formulate the budget request which is submitted to the Board of Higher Education.

Section 4-7 of the Act further provides that the ICCB shall "also review and approve" any changes to the SCC budget which are submitted by the SCC board of trustees after the budget is enacted. The use of the term "also", in this context, supports the conclusion that the ICCB has been granted the authority to "review and approve" the original budget proposal from SCC, as well as amendments to the adopted budget.

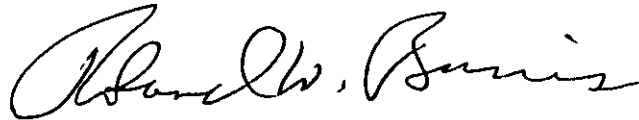
A statutory requirement of approval carries with it the exercise of judgment or discretion. Thus, in Gustafson v. Wethersfield Township High School Dist. 191 (1943), 319 Ill. App. 254, the appellate court stated:

"[W]hen the approval of a distinct officer or body of officers is made necessary to validate, consummate or make effective by law the act of another, it is the intention of the legislature that such officer or board of officers should be vested with the option and discretion to sanction officially or disapprove the act submitted to him or them."

Similarly, in Parliament Insurance Company v. Department of Revenue (1977), 50 Ill. App. 3d 341, the court held that the Department's statutory authority to approve security submitted with applications for certificates of registration under the Retailers' Occupation Tax Act included the authority to disapprove the security.

Therefore, it is my opinion that the ICCB has the authority either to approve or disapprove the proposed budget submitted to it by the SCC board of trustees; if disapproved, the ICCB may formulate an alternate budget proposal for submission to the Board of Higher Education. Once the budget is enacted in its final form, no revisions can be made thereto by the SCC board of trustees without the approval of the ICCB.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL