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FILE NO. S-1391

APPROPRIATIONS:  
Amendments to FY78  
Appropriation Acts

Honorable Michael J. Bakalis  
Comptroller  
201 State House  
Springfield, Illinois 62706

Dear Mr. Bakalis:

This responds to your letter concerning Public Acts 80-1217, 80-1219, 80-1222, 80-1224, 80-1229, and 80-1270. In addition to appropriating funds to certain State agencies for fiscal year 1979 (FY79), each of these Acts also amended the fiscal year 1978 (FY78) appropriation Act of a particular State agency. You ask the following two questions regarding the State agencies whose FY78 appropriations were amended by one of these six Acts:

Honorable Michael J. Bakalis - 2.

1. Did these State agencies have the authority to create outstanding obligations in FY78 that were in excess of the amount appropriated at the time the obligations were incurred?
2. During the lapse period, may these State agencies submit vouchers to the Comptroller which expend monies appropriated by the amendments to the agencies' FY78 appropriation Acts?

My answer to your first question is no. Section 30 of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1977, ch. 127, par. 166) provides as follows:

"No officer, institution, department board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

Section 30 clearly prohibits a State agency from incurring obligations which are in excess of its appropriation. Hence, unless they were expressly authorized by law, the State agencies in question were prohibited from incurring obligations in excess of their FY78 appropriations.

In regard to your second question, the State is under no obligation to pay any indebtedness which is incurred by a State agency in violation of section 30. The General Assembly, however, may authorize the payment of indebtedness

Honorable Michael J. Bakalis - 3.

which violates section 30. (1975 Ill. Att'y Gen. Op. 246.)

It is my opinion that in amending the FY78 appropriation Acts of the State agencies in question, the General Assembly intended to appropriate funds to pay for obligations which may have been incurred in excess of FY78 appropriations.

This legislative intent is made clear in Public Act 80-1270. Section 92 of Public Act 80-1270 states that the FY78 appropriations amended by the Act "shall be available to pay obligations incurred through June 30, 1978, and for this purpose, in the event this Act becomes law after June 30, 1978, are declared to be retroactive." Thus, although Public Act 80-1270 became law after June 30, 1978, the provisions of the Act clearly evidence the legislature's intention to make the funds appropriated by the Act available for obligations incurred during FY78.

Public Acts 80-1217, 80-1219, 80-1222, 80-1224, and 80-1229 also became law after June 30, 1978. Each of these Acts provides that the amendment of the particular State agency's FY78 appropriation "shall take effect June 30, 1978, and if this Act becomes law after that date, the provisions thereof shall be

Honorable Michael J. Bakalis - 4.

retroactively applied and effective as of June 30, 1978." In view of the fact that the State agencies affected by these Acts apparently had incurred obligations in excess of their FY78 appropriations, it must be concluded that the legislature's purpose in providing for the retroactive application of these Acts was to authorize the payment of obligations that were incurred in excess of the original FY78 appropriations.

Because the legislature has expressly provided that the amendments to the FY78 appropriation Act enacted by Public Acts 80-1217, 80-1219, 80-1222, 80-1224, 80-1229, and 80-1270 are to be made available for obligations incurred during FY78, it is my opinion that during the lapse period State agencies may submit vouchers to the Comptroller which expend monies appropriated by these Acts even though the vouchers cover FY78 obligations which were incurred in excess of the original FY78 appropriations to the agencies. Furthermore, it is my opinion that when such vouchers are presented to the Comptroller, the Comptroller may draw warrants on funds appropriated by one of six amendatory Acts in question.

Very truly yours,

A T T O R N E Y   G E N E R A L