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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 82-022

STATE MATTERS:

Duty of the Auditor General to
Audit the Attorney Registration and
Disciplinary Commission of the
Supreme Court

Honorable Robert G. Cronson
Illinois Auditor General
Marriott Commerce Building, Room 151
509 South Sixth Street
Springfield, Illinois 62701-1878

Dear Mr. Cronson:

I have your letter in which you inquire whether,
pursuant to the provisions of section 3 of article VIII of the
Illinois Constitution of 1970 (Ill. Const. 1970, art. VIII,
§ 3) and section 3-2 of the Illinois State Auditing Act (Ill.
Rev. Stat. 1981, ch. 15, par. 303-2, as amended by Public Act
82-783, effective July 13, 1982), the Auditor General is
required to conduct a financial audit of the Attorney Regis-

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tration and Disciplinary Commission of the Supreme Court of Illinois. For the reasons hereinafter stated, it is my opinion that it is the duty of the Auditor General to conduct such an audit.

Subsection 1(a) of article VIII of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VIII, § 1(a)) provides:

"(a) Public funds, property or credit shall be used only for public purposes."

Section 3 of article VIII of the Illinois Constitution of 1970, provides in pertinent part:

"(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(b) The Auditor General shall conduct the audit of public funds of the State. * * * (Emphasis added.)

The Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-1 et seq.) is not the source of the auditing requirement but simply implements the general grant of power and delegation of responsibility contained in subsection 3(a) of article VIII of the Illinois Constitution. Section 1-2 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-2) provides, in pertinent part:

"Purpose and construction.

(a) This Act implements Article VIII, Section 3 of the Constitution, and shall be construed in furtherance of those provisions.

(b) This Act is intended to provide a comprehensive and thorough post audit of the obligation, expenditure, receipt and use of public funds of the State under the direction and control of the Auditor General, to the end that the government of the State of Illinois will be accountable to the General Assembly and the citizens and taxpayers, and to the end that the constitutional and statutory requirements governing state fiscal and financial operations will be enforced.

* * *

(Emphasis added.)

Section 1-18 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-18) provides:

"'Public funds of the State' has the meaning ascribed to that term in Article VIII of the Constitution."

With respect to the duty of the Auditor General to audit agencies of the State, section 3-1 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 303-1) provides in pertinent part:

"Jurisdiction of Auditor General. The Auditor General has jurisdiction over all State agencies to make post audits and investigations authorized by or under this Act or the Constitution.

* * *

Section 3-2 of the Illinois State Auditing Act provides, in pertinent part:

"Mandatory and directed post audits. The Auditor General shall conduct a financial audit of each State

agency except the Auditor General or his office at least once during every biennium, except as is otherwise provided in regulations adopted under Section 3-8. * * *

* * *

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(Emphasis added.)

The term "State agencies" is defined in section 1-7 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-7) as follows:

"'State agencies' means all officers, boards, commissions and agencies created by the Constitution, whether in the executive, legislative or judicial branch, but other than the circuit court; all officers, departments, boards, commissions, agencies, institutions, authorities, universities, bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor." (Emphasis added.)

The term "financial audit", as applicable to State agencies, is defined in section 1-13 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-13) as follows:

"'Financial audit' * * * means a post audit which determines:

(a) whether the audited agency has obligated, expended, received and used public funds of the State in accordance with the purpose for which such funds have been appropriated or otherwise authorized by law;

(b) whether the audited agency has obligated, expended, received and used public funds of the State in accordance with any limitations, restrictions, conditions or mandatory directions imposed by law upon such obligation, expenditure, receipt or use;

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(c) in the case of a State agency, whether the audited agency has generally complied with applicable laws and regulations, including the State uniform accounting system, in its financial and fiscal operations;

(d) in the case of a State agency, whether the records, books and accounts of the audited agency accurately reflect its financial and fiscal operations;

* * *

(f) in the case of a State agency, whether the audited agency is maintaining effective accounting control over revenues, obligations, expenditures, assets and liabilities;

(g) whether collections of State revenues and receipts by the audited agency are in accordance with applicable laws and regulations and whether the accounting and record keeping of such revenues and receipts is fair, accurate and in accordance with law;

(h) in the case of a State agency, whether money or negotiable securities or similar assets handled by the audited agency on behalf of the State or held in trust by the audited agency have been properly and legally administered, and whether the accounting and record keeping relating thereto is proper, accurate and in accordance with law; and

(i) whether financial, program and statistical reports of the audited agency contain useful data and are fairly presented."

Initially, in order to determine whether the Auditor General is under a duty to conduct a financial audit of the Attorney Registration and Disciplinary Commission, it is necessary to examine the nature of the Commission to determine if it is a "State agency" for purposes of the Illinois State Auditing Act.

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The judicial power of the State is vested exclusively and entirely in the courts. (Ill. Const. 1970, art. VI, § 1; Wright v. Central DuPage Hosp. Ass'n (1976), 63 Ill. 2d 313, 322.) In exercising the judicial power of the State, the Supreme Court has inherent power to determine qualifications for admission to the bar, and the power to discipline or disbar attorneys for misconduct. (In re Reynolds (1965), 32 Ill. 2d 331, 336; In re Teitelbaum (1958), 13 Ill. 2d 586, 593-94; People v. Goodman (1937), 366 Ill. 346, 349-50; People v. Peoples Stock Yards Bank (1931), 344 Ill. 462, 470.) Further, the power of the Supreme Court to license, enroll, and disbar attorneys has been codified. (Ill. Rev. Stat. 1981, ch. 13, pars. 1 through 13.)

To facilitate the administration of its powers and duties with respect to the regulation of the legal profession, the Supreme Court has created the Attorney Registration and Disciplinary Commission by judicial rule. Supreme Court Rule 751 (73 Ill. 2d R. 751) provides, in pertinent part:

"The registration of, and disciplinary proceedings affecting, members of the Illinois Bar shall be under the administrative supervision of an Attorney Registration and Disciplinary Commission.

The Commission shall consist of 5 members of the Illinois Bar appointed by the Court. One member shall be designated by the Court as Chairman. * * * Any member of the Commission may be removed by the Court at any time, without cause.

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Among the powers of the Commission are the powers to make rules governing disciplinary proceedings, to supervise the Administrator of the registration and disciplinary system and his personnel, to appoint the members of the system's inquiry and hearing boards, and to collect and administer a disciplinary fund consisting of registration fees assessed against attorneys of the State. Pursuant to Supreme Court Rule 752 (72 Ill. 2d R. 752), the court also appoints an Administrator of the system, to serve at the pleasure of the court, who is empowered to investigate the conduct of attorneys and to employ such personnel as are necessary to the conduct of his office. Supreme Court Rules 753 through 771 (73 Ill. 2d R. 753-770; 79 Ill. 2d R. 771) further delineate the functions and procedures of the registration and disciplinary system.

It is apparent, by reference to Supreme Court Rules 751 through 771, that the Attorney Registration and Disciplinary Commission is subject to the direct supervision and control of the Supreme Court. In performing its functions and duties, the Commission acts as an administrative agency of the Supreme Court; it is an administrative agency of the judicial branch of State government. An agency which is created and controlled by the Supreme Court of the State, pursuant to rules of court which, when properly promulgated have the force of law (People ex rel. Rose v. Craig (1949), 404 Ill. 505, 508; Gyure v. Sloan Valve Co. (1937), 367 Ill. 489, 493), to facilitate

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the administration of a judicial function, is a State agency just as if created pursuant to statute or by executive order.

This conclusion is supported by reference to opinion No. S-793, issued July 31, 1974, in which my predecessor discussed the nature of the Attorney Registration Commission, by which name the present Attorney Registration and Disciplinary Commission was then entitled. It was advised therein that:

" * * *

The General Assembly has the sole duty and responsibility of legislation. (People v. Barnett, 344 Ill. 62.) There is no legislative authority in the judicial branch to perform legislative functions which are within the purview of the General Assembly. (Parizon v. Granite City Steel Co., 71 Ill. App. 2d 53.) This lack of power in the judiciary obviously extends to the creation of instrumentalities which, by definition, must be 'separate and distinct from the State of Illinois and its political subdivisions'. The judiciary is a branch of State government and any entity created by it in the exercise of rule-making authority necessarily would not be 'separate and distinct from the State of Illinois'.

Although the Supreme Court may properly hire employees and otherwise act to carry out the functions of the judicial branch, it does not enjoy the legislative power reposed by the people in the General Assembly to create by law a quasi-corporate or juristic entity which is legally separate and distinct from the State of Illinois. To conclude otherwise would be to ignore the doctrine of separation of powers.

Therefore, I conclude that the Commission is not an instrumentality of the State of Illinois, as defined in the Social Security Enabling Act, supra, but rather that it is an agency of the judicial branch of the State of Illinois.

* * *

(Emphasis added.) (1974 Ill. Att'y Gen. Op. 217, 220-21; see also opinion No. 81-024, issued July 28, 1981.)

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I concur in the conclusion expressed in opinion No. S-793, and conclude that the Attorney Registration and Disciplinary Commission is a "State agency" as defined in section 1-7 of the Illinois State Auditing Act. Furthermore, it is my opinion that the funds collected and administered by the Commission pursuant to Supreme Court Rules 751(e) and 756, which establish a disciplinary fund, constitute "public funds of the State", the obligation, receipt, and expenditure of which the Auditor General has a duty to audit. (Ill. Const. 1970, art. VIII, § 3; Ill. Rev. Stat. 1981, ch. 15, par. 301-2.)

The term "public funds of the State" as used in article VIII of the Illinois Constitution of 1970 has not been construed by the Illinois courts subsequent to the adoption of the 1970 Constitution. The term is not specifically defined nor is its meaning explained in the Record of Proceedings of the Sixth Constitutional Convention. It is well established that words employed in a constitution are to be given their natural and ordinary meaning, however, and should be read and understood in accordance with the natural and obvious import of the language. State Bank of Steger v. Trust Co. (1922), 302 Ill. 77, 81; People v. Stevenson (1917), 281 Ill. 17, 25.

In Droste v. Kerner (1966), 34 Ill. 2d 495, cert. denied, 385 U.S. 456 (1966), the court was asked to construe the term "public funds" to include public property such as real estate. Construing the term according to the plain and ordinary meaning of its words, the court therein stated:

" * * * Webster's New International Dictionary, 2d ed. p. 2005, defines 'public funds' as being: 'Moneys belonging to a government, or any department of it, in the hands of a public official.' (See also: Cases collected in Words & Phrases, Perm. ed. vol. 35, pp. 164-172.) Approximately the same definition is given in Black's Law Dictionary, 4th ed., p. 802, and this court has on two occasions stated that the word 'funds', in its common usage, 'ordinarily means money or negotiable instruments readily convertible into cash, and has been defined as property of every kind when such property is contemplated as something to be used for payment of debts.' (People ex rel. Illinois Armory Board v. Kelly, 369 Ill. 280, 284-285; Broadway Bank of St. Louis v. McGee Creek Levee and Draining Dist. 292 Ill. 560, 565.) * * *" (At 503.)

Accepting this judicial construction of the term "public funds", and giving effect to the constitutional requirement that public funds may be used only for public purposes, it is my opinion that the term "public funds of the State" means those funds raised or held by the government or a governmental unit or agency of the State, for the conduct of government, the discharge of governmental obligations, or other governmental and public purposes. (See, Pokorny v. Wayne County (S.Ct. Mich. 1948), 33 N.W.2d 641; Wood Bros. Const. Co. v. Bagley (S.Ct. Iowa 1942), 6 N.W.2d 397.) The source from which such funds are derived does not affect their nature as public funds. (Krebs v. Thompson (1944), 387 Ill. 471, 474-75; Green v. Black (1933), 352 Ill. 623, 626-27; see also, Allen v. City of Omaha (S.Ct. Neb. 1939), 286 N.W. 916, 919.) That the framers of the Constitution intended the term "public funds of the State" to have the broadest possible meaning is clear from

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the debates concerning the State budgetary process. See, 2 Record of Proceedings, Sixth Illinois Constitutional Convention 869-77, 883-85.

Although the funds of the Attorney Registration and Disciplinary Commission are not derived from taxation, they are raised by judicial order of the Supreme Court of the State. Pursuant to Supreme Court Rule 751, the Attorney Registration and Disciplinary Commission is authorized by the Supreme Court to collect and administer a disciplinary fund consisting of the registration fees required by Supreme Court Rule 756. Supreme Court Rule 756 provides that, with certain specific exceptions, "* * * every attorney admitted to the bar to practice law in this State shall pay an annual registration fee to this Commission. * * *" Subparagraph (d) of Supreme Court Rule 756 provides that the name of any person who has not paid the annual registration fee, unless excused, shall be removed from the Master Roll of Attorneys, and the subparagraph concludes:

"* * * Any person whose name is not on the Master Roll and who practices law or who holds himself out as being authorized to practice law in this state is engaged in the unauthorized practice of law and may also be held in contempt of the Court."

Thus, the privilege of practicing law in Illinois is conditioned on the payment of an annual registration fee, and the listing of the attorney's name on the Master Roll. The required payment of a registration fee cannot be considered voluntary. Cf., Cummings v. Smith (1937), 368 Ill. 94.

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The funds derived from annual registration fees are received, administered and expended by an agency or unit of the judicial branch of State government to perform a public and governmental function, that being to safeguard the public, maintain the integrity of the profession, and to protect the administration of justice from reproach. (In re Lacob (1972), 50 Ill. 2d 277, 279.) Therefore, it is my opinion that the funds of the Attorney Registration and Disciplinary Commission are "public funds of the State" within the meaning of article VIII of the Illinois Constitution of 1970. Further, because the Attorney Registration and Disciplinary Commission is a State agency as defined in the Illinois State Auditing Act, which receives, obligates, and expends public funds of the State, it is my opinion that the Auditor General has the duty to conduct a financial audit of the Commission in accordance with the Constitution and law.

It has been suggested that the imposition of this audit requirement would be violative of the constitutional doctrine of separation of powers between the branches of State government. I find no merit in this contention.

Section 1 of article II of the Illinois Constitution of 1970 (Ill. Const. 1970, art. II, § 1) provides:

"The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

Thus, it has been stated, with regard to the Illinois Constitution of 1870:

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* * * In a representative government, such as we enjoy in Illinois, all powers of government belong ultimately to the people in their sovereign corporate capacity. Under such a government the people may distribute, for the purposes of government, the various powers thereof. These they have divided into three departments: Legislative, executive, and judicial. * * *

* * *

(People ex rel. Elliott v. Covelli (1953), 415 Ill. 79, 88.) "

In addressing the meaning of the doctrine of separation of powers, the Supreme Court has also stated:

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* * *

* * * The separation of powers doctrine does not contemplate the division of powers of government into rigidly separated compartments. This court has held that the doctrine was not designed to achieve a complete divorce among the three branches of government. [Citation.] The true meaning, in theory and in practice, of the doctrine is that the whole power of two or more of the branches of government shall not be lodged in the same hands. [Citations.]

* * *

(In re Estate of Barker (1976), 63 Ill. 2d 113, 119.) "

Furthermore, it is recognized that the doctrine of separation of powers is subject to exceptions contained within the constitution itself:

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* * *

* * * Neither of these three departments is subordinate to or may exercise any control over another except as is provided by the constitution. Their status is that of equality, each acting within its own sphere independent of each of the others, so long as its action does not exceed the powers confided

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to it, unless particular exceptions are made to this general rule by the constitution itself. [Citation.]
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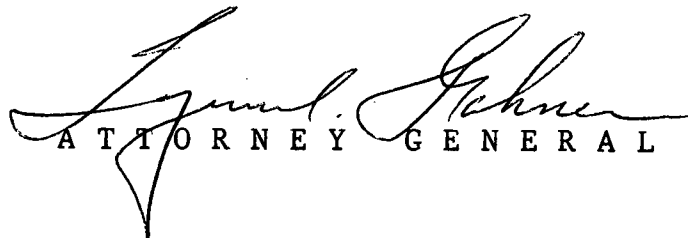
* * * " (Emphasis added.) Fergus v. Marks (1926), 321 Ill. 510, 514.

Article VI of the Illinois Constitution of 1970 vests the judicial power of the State in its courts. Section 3 of article VIII of the Constitution vests the power and duty to provide for the audit of the obligation, receipt, and use of public funds of the State in the General Assembly and the Auditor General, a constitutional officer of the legislative branch. The constitution, being enacted by the people, under their original and sovereign power, is the fundamental law in which the people grant powers to and prescribe limits for each of the several departments. (People v. Dunne (1913), 258 Ill. 441, 453.) When construing the powers of the three branches of State government, examination cannot be confined to the separation of powers clause, which in itself grants no powers; rather, reference must be made to the division as actually enacted to see which powers are clearly granted, as only such may be exercised. (Field v. People ex rel. McClernand (1839), 3 Ill. 79, 84.) That the people of the State have, by adoption and ratification of the Illinois Constitution of 1970, delegated the power to audit the use of public funds of the State to the General Assembly and the Auditor General, cannot be construed as an impermissible infringement upon the inherent

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power of the judicial branch of government, and therefore, it is my opinion that the Auditor General's conduct of a financial audit of the Attorney Registration and Disciplinary Commission of the Supreme Court does not violate the doctrine of separation of powers.

Very truly yours,


A T T O R N E Y G E N E R A L