OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 23, 2013

FILE NO. 13-002

STATE MATTERS:
Applicability of Executive Orders, Administrative Orders, and Directives Limiting the Use of Appropriated Funds to Executive Agencies Not Under the Governor's Jurisdiction

Mr. Ronald P. Cooley
Executive Director
Illinois State Police Merit Board
531 Sangamon Avenue East
Springfield, Illinois 62702

Dear Mr. Cooley:

I have your letter inquiring whether the Illinois State Police Merit Board (the Merit Board) is required to comply with executive orders issued by the Governor and administrative orders and directives issued by the Governor's Office of Management and Budget (GOMB) that would reduce the amount or limit the use of funds appropriated to the Merit Board. For the reasons stated below, it is my opinion that once funds are appropriated to the Merit Board and the appropriation bill is signed into law, neither the Governor nor GOMB may reduce or limit the Merit Board's use of appropriated funds through an executive order, administrative order, or directive, unless such action is specifically authorized by law.

BACKGROUND

The Illinois State Police Merit Board

The General Assembly created the Merit Board in 1949. *See* 1949 Ill. Laws 1357. The Merit Board is comprised of five members appointed by the Governor, with the advice and consent of the Senate. 20 ILCS 2610/3 (West 2012). The Merit Board exercises jurisdiction over the certification for appointment and promotion of State Police officers, as well as their discipline, removal, demotion, and suspension. 20 ILCS 2610/8, 9 (West 2012). Section 7.1 of the State Police Act (20 ILCS 2610/7.1 (West 2012)) provides:

> In furtherance of the policy of this Act that *the [Merit] Board shall exercise its powers and duties in an independent manner*, subject to the provisions of this Act but *free from the direction, control or influence of any other agency or department of State government*, after June 30, 1989 all expenses and liabilities incurred by the Board in the performance of its responsibilities hereunder shall be paid from funds which shall be appropriated to the Board by the General Assembly for the ordinary and contingent expenses of the Board. (Emphasis added.)

In 2012, the General Assembly enacted Public Act 97-1051, effective January 1, 2013, which added section 7.2 to the State Police Act (20 ILCS 2610/7.2 (West 2012)), creating the State Police Merit Board Public Safety Fund. The statute provides that this fund may receive State appropriations and "shall be used by the State Police Merit Board * * * to meet all costs associated with the functions of" the Board. 20 ILCS 2610/7.2(a) (West 2012). In establishing this special fund, the General Assembly specifically gave the Board the responsibility for the fund's administration and provided that "[n]otwithstanding any other law to the contrary, the State Police Merit Board Public Safety Fund is not subject to sweeps, administrative charge-

backs, or any other fiscal or budgetary maneuver that would in any way transfer any amounts from the State Police Merit Board Public Safety Fund into any other fund of the State." 20 ILCS 2610/7.2(a) (West 2012).

Fiscal Year 2011 Example

In conjunction with signing the fiscal year 2011 appropriation bills (*see* Public Acts 96-956, effective July 1, 2010; 96-957, effective July 1, 2010), the Governor issued Executive Order No. 2010-10, which, among other things, authorized the Director of GOMB to "issue an administrative directive to reflect the reduced appropriation levels provided in the FY 2011 budget and to create contingency reserves, as authorized under the Executive [*sic*] Budget Act of Fiscal Year 2011."[1] Executive Order No. 2010-10, XIII, issued July 1, 2010. Pursuant to this grant of authority, on September 21, 2010, the Director of GOMB issued Administrative Order No. 3 directing State agencies to address the State's fiscal crisis by selling surplus State property, reducing expenditures on warehouse facilities, and eliminating unnecessary telephone lines and mobile telephones. Further, GOMB issued a directive to the Merit Board limiting Board expenditures in order to "implement a GRF reserve in the amount of 50K."[2]

Although this executive order and the GOMB directive preceded the addition of section 7.2 to the State Police Act establishing the State Police Merit Board Public Safety Fund,

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[1]This office's research has located no legislative enactment entitled the "Executive Budget Act of Fiscal Year 2011." We have assumed, therefore, that the executive order contained a scrivener's error and that the reference should have been to the "Emergency Budget Act of Fiscal Year 2011" (*see* Public Act 96-958, effective July 1, 2010).

[2]E-mail from Jared Brunk, Budget Analyst, Governor's Office of Management and Budget, to Ron Cooley, Executive Director, Illinois State Police Merit Board (September 3, 2010).

they illustrate your question. You have asked whether the Merit Board is required to comply with similar executive orders issued by the Governor and administrative orders and directives issued by GOMB that would reduce the amount or limit the Board's use of funds appropriated to it by the General Assembly and approved by the Governor.

ANALYSIS

The State Budget and Appropriations Process

The Illinois Constitution of 1970 requires that the Governor annually prepare and submit to the General Assembly a proposed State budget for the following fiscal year. Ill. Const. 1970, art. VIII, §2(a); *see generally* 15 ILCS 20/50-1 *et seq.* (West 2012). The proposed budget must set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, State debts and liabilities, and a plan for expenditures and obligations during the fiscal year "of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State[.]" Ill. Const. 1970, art. VIII, §2(a).

Under the State Budget Law (15 ILCS 20/50-1 *et seq.* (West 2012)), the proposed State budget must include, among other things, "amounts recommended by the Governor to be appropriated to the respective departments, offices, and institutions, and for all other public purposes[.]" 15 ILCS 20/50-5 (West 2012), as amended by Public Act 98-002, effective February 19, 2013. All appropriations recommended to the General Assembly by the Governor are to be incorporated into appropriation bills for the General Assembly's consideration. 30 ILCS 105/13.4 (West 2012). After passing an appropriation bill, the General Assembly presents it to

the Governor who may either sign the bill into law, veto it *in toto*, or reduce or veto one or more individual line items.

Executive Orders

The Constitution provides that "[t]he Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him." Ill. Const. 1970, art. V, §11. This is the only reference to executive orders in the Constitution and, as a result, the only circumstance in which an executive order clearly carries the force and effect of law.[3] The Governor's power to reassign functions or reorganize agencies by executive order does not extend to the Merit Board, however. Section 3.1 of the Executive Reorganization Implementation Act (15 ILCS 15/3.1 (West 2012)) expressly excludes the Merit Board from the definition of "[a]genc[ies] directly responsible to the Governor[.]" Even without this express exclusion of the Merit Board, the issue you have raised does not involve the use of an executive order to reassign functions or reorganize an agency. Consequently, the constitutional provision addressing executive orders provides little guidance.

In general, article V, section 8, of the Illinois Constitution provides that "[t]he Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Citing this authority, the Illinois courts have suggested that an executive order may be a permissible method by which the Governor can execute an existing law, but that an executive order is not a vehicle for establishing a new legal requirement. *Buettell v. Walker*,

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[3]Even executive orders reorganizing agencies responsible to the Governor, however, are subject to disapproval by the General Assembly in accordance with the provisions of the Executive Reorganization Implementation Act (15 ILCS 15/1 *et seq.* (West 2012)). *See* Ill. Const. 1970, art. V, §11.

59 Ill. 2d 146, 153-54 (1974). Accordingly, the Governor does not have power to legislate by executive order, and, therefore, unless authorized by law, an executive order relating to matters other than executive reorganization can be no more than a policy directive to agencies under the Governor's control. To conclude otherwise would cede to the Governor legislative powers which he is prohibited from exercising by the separation of powers doctrine. *See* Ill. Const. 1970, art. II, §1; *see generally* Ill. Const. 1970, art. IV, §1.

As noted above, the Merit Board is expressly excluded from the definition of an "[a]gency directly responsible to the Governor" in the Executive Reorganization Implementation Act because it was "created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor[.]" 15 ILCS 15/3.1 (West 2012). This statutory language clearly demonstrates that, in establishing the Merit Board, the General Assembly did not consider the Board to be an agency directly subordinate to the Governor. Further, the General Assembly has granted the Merit Board the authority to operate "free from the direction, control or influence of any other *agency or department* of State government[.]" (Emphasis added.) 20 ILCS 2610/7.1 (West 2012).

Construing these provisions together, it is my opinion that the Merit Board is a State agency which, generally, is not subject to the Governor's direct control. Accordingly, because its operations are outside of the scope of the Governor's power to enforce executive orders, the Board is not required to comply with executive orders issued by the Governor that would reduce the amount or limit the use of funds appropriated to the Board, unless the General Assembly specifically gives the Governor the authority to take such action with regard to the

Merit Board's appropriated funds. Consequently, it is necessary to determine whether the General Assembly has granted the Governor or GOMB the authority to issue the executive orders, administrative orders, or directives which underlie your inquiry.

GOMB Administrative Orders and Directives

Fiscal year 2011 also provides an example to illustrate this analysis. Section 1-10 of the Emergency Budget Act of Fiscal Year 2011 (the Emergency Budget Act) (30 ILCS 187/1-10 (West 2010))[4] authorized the creation of contingency reserve funds,[5] and provided, in pertinent part:

> Beginning on July 1, 2010 and until June 30, 2011, *the Governor may designate amounts to be set aside as a contingency reserve from the amounts appropriated from the General Revenue Fund*, the Common School Fund, the Education Assistance Fund, and any special fund of the State for State fiscal year 2011 *for all boards*, commissions, agencies, institutions, authorities, colleges, universities, and bodies politic and corporate *of the State, but not other constitutional officers, the legislative or judicial branch, the office of the Executive Inspector General, or the Executive Ethics Commission.* The total contingency reserve may not exceed one-third of the sum of (i) the total dollar amount of vouchers that have been submitted to the State Comptroller for payment but for which

[4]Section 1-10 of the Emergency Budget Act was repealed by its own terms on July 1, 2011. *See* 30 ILCS 187/1-90 (West 2010).

[5]The Emergency Budget Act of Fiscal Year 2011 was not the first instance in which the General Assembly granted the Governor authority to designate amounts to be set aside as contingency reserves. The Emergency Budget Implementation Act of Fiscal Year 2010 (30 ILCS 186/1-1 *et seq.* (West 2012)) authorized the Governor to designate amounts to be set aside as a contingency reserve up to $1.1 billion from amounts appropriated from the General Revenue Fund for fiscal year 2010. 30 ILCS 186/1-10 (West 2012). The Emergency Budget Act of Fiscal Year 1992 (1991 Ill. Rev. Stat., ch. 127, pars. 4351 through 4395), which was repealed on October 1, 1992 (*see* 1991 Ill. Rev. Stat., ch. 127, par. 4390), not only authorized the Governor to designate amounts from specified funds to be set aside as a contingency reserve, but also required all State agencies, including the other constitutional officers and the legislative and judicial branches, to designate specific amounts to be set aside as a contingency reserve from the amounts appropriated from specified funds for fiscal year 1992. The total amount to be designated by the Illinois State Police Merit Board in 1992 for its contingency reserve was $27,000. Ill. Rev. Stat. 1991, ch. 127, par. 4365.

> warrants have not been issued by the Comptroller as of July 1, 2010 and (ii) the total dollar amount of any fiscal year 2010 mandated statutory transfers that have not been executed as of July 1, 2010. (Emphasis added.)

Further, the Emergency Budget Act was "to be liberally construed and interpreted in a manner that allows the State to address the fiscal crisis for the State fiscal year 2011." 30 ILCS 187/1-5 (West 2010).[6] In case of any conflict between the provisions of the Emergency Budget Act and any other law, executive order, or administrative regulation, the provisions of the Emergency Budget Act were to prevail and control. 30 ILCS 187/1-35 (West 2010).[7]

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Board of Education of Auburn Community Unit School District No. 10 v. Department of Revenue*, 242 Ill. 2d 272, 279 (2011). Legislative intent is best evidenced by the language used in the statute. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). Where statutory language is clear and unambiguous, it must be given effect as written. *First American Bank Corp. v. Henry*, 239 Ill. 2d 511, 516 (2011).

Under the plain and unambiguous language of section 1-10, in fiscal year 2011, the General Assembly granted the Governor the authority to designate amounts to be set aside by the indicated public bodies as contingency reserve funds from amounts appropriated from the General Revenue Fund. The Governor's authority extended to appropriations made to, among others, "all boards * * * of the State[.]"

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[6]Section 1-5 of the Emergency Budget Act was repealed on July 1, 2011. *See* 30 ILCS 187/1-90 (West 2010).

[7]Section 1-35 of the Emergency Budget Act was repealed on July 1, 2011. *See* 30 ILCS 187/1-90 (West 2010).

Although it is not generally under the Governor's jurisdiction, the Merit Board is clearly a "board[ ] * * * of the State[.]" As such, the Merit Board was subject to section 1-10 of the Emergency Budget Act. Further, in fiscal year 2011, the appropriations for the Merit Board's operational expenses were from the General Revenue Fund (*see* Public Acts 96-956, art. 72, §5, effective July 1, 2010; 96-957, art. 6, §50, effective July 1, 2010), one of the funds from which the Governor was expressly authorized to designate amounts to be set aside as a contingency reserve. Therefore, based on the plain and unambiguous language of section 1-10 of the Emergency Budget Act, it is my opinion that the Governor and GOMB were authorized to reduce or limit the use of funds appropriated to the Merit Board for fiscal year 2011. To the extent that the provisions of section 7.1 of the State Police Act conflicted with the Emergency Budget Act, the provisions of the Emergency Budget Act controlled. Because nothing in the language of section 1-10 expressly addressed the method by which the Governor was to designate amounts to be set aside as contingency reserves or notify an affected public body of its set aside amount, the Governor, as an exercise of his discretion, was free to use executive orders, administrative orders, or directives issued by GOMB, to effectuate the General Assembly's grant of authority.

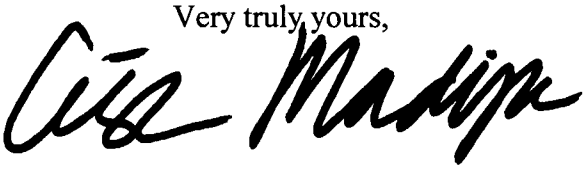
Whether the Merit Board will be required to comply with future executive orders, administrative orders, or directives from the Governor or GOMB that would reduce the amount or limit the use of funds appropriated to the Merit Board will depend on the existence of legislative enactments specifically authorizing such action and the language of the enactments themselves. As noted above, section 7.2 of the State Police Act (20 ILCS 2610/7.2 (West 2012)) now provides that "[n]otwithstanding any other law to the contrary, the State Police Merit Board

Public Safety Fund is not subject to sweeps, administrative charge-backs, or any other fiscal or budgetary maneuver that would in any way transfer any amounts from the State Police Merit Board Public Safety Fund into any other fund of the State." Any new law authorizing the Governor or GOMB to limit the Merit Board's expenditure of appropriated funds would need to be analyzed with regard to the language of section 7.2.

CONCLUSION

The Illinois State Police Merit Board is not subject to executive orders issued by the Governor, or administrative orders or directives issued by the Governor's Office of Management and Budget that would reduce the amount or limit the use of funds appropriated to the Board by the General Assembly, except to the extent expressly authorized by law. Consequently, whether the Merit Board may be required to comply with future executive orders, administrative orders, or directives from the Governor or GOMB that impact the Merit Board's use of funds appropriated to it will depend on the existence of a statute authorizing such action and the specific language of the statute.

Very truly yours,



LISA MADIGAN
ATTORNEY GENERAL