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FILE NO. S-628

STATE EMPLOYEES:
Compensation

Honorable George W. Lindberg
Comptroller
State of Illinois
201 State House
Springfield, Illinois 62706

Dear Comptroller Lindberg:

I have your letter of recent date wherein you state:

"Examination of payroll vouchers sent through this office, indicate that four employees are on the payroll of the Department of Transportation, Department of Mental Health and the Department of Correction on a daily rate. The examination of the same payroll for the Department of Registration and Education shows the same individuals on that payroll for the same days.

In other words, the payroll vouchers in the possession of this office would require payment of these four employees twice for the same period of time.

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Will you give us your opinion as to whether or not this office is obliged to pay an individual wages for two different jobs where the time so conflicts it is apparent the work could not have been performed."

It is apparent from your question that a proper answer must first, inquire into the authority of the Comptroller to refuse payment of compensation to State employees and, second, to determine whether the circumstances as presented in your letter justify a refusal of payment.

Section 9 of the State Comptroller Act (Ill. Rev. Stat. 1972 Supp., ch. 15, par. 209), provides in pertinent part:

"* * * The Comptroller shall examine each voucher and all other documentation required by or pursuant to law to be filed with him and shall ascertain the legality of the transaction. * * * If he has reason to believe from the documents filed in connection therewith that such obligation or expenditure of public funds is contrary to law or unauthorized, * * * the Comptroller shall refuse to draw a warrant. * * *"

Thus, there is ample authority for the State Comptroller, if he has reason to believe that an expenditure of public funds is contrary to law or unauthorized, to refuse to draw a warrant for said expenditure. Therefore, the determination must be made as to whether or not the circumstances as

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presented in your letter indicate that the payment to the employees involved therein, is contrary to law or otherwise unauthorized.

It is generally well recognized that a State employee who is regularly appointed, has not been removed, and has performed the services he was expected to perform, is entitled to recover compensation. (81 C.J.S. States, sec. 96.) A State employee is entitled to receive only such pay as he has earned. Board of Capitol Managers, et al. v. Rusan, 210 Pac. 328 (Colo. 1922); 81 C.J.S. States, sec. 91.

The compensation of State officers, agents and employees is a matter of constitutional and statutory regulation. 33 A.I.L.P. State Government, sec. 63.

Section 9 of the State Finance Act (Ill. Rev. Stat. 1972 Supp., ch. 127, par. 145) provides in pertinent part:

"No warrant shall be issued by the Auditor of Public Accounts for the payment of money from the State treasury without the presentation of itemized vouchers showing that obligations have been incurred against such appropriation."

Based upon general contractual principles, an obligation to compensate a State employee does not exist unless and until the employee renders personal services.

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Section 9 of the State Finance Act, supra, further provides:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed."

Thus, the amount paid from appropriations for the personal services of a State employee is considered as full payment for services rendered. Accordingly, payment for personal service denotes the compensation made for services rendered. Section 14 of the State Finance Act (Ill. Rev. Stat. 1971, ch. 127, par. 150) reads:

"The item 'personal services', when used in an appropriation act, means the reward or

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recompense made for personal services rendered for the State by an officer or employee of the State or of any instrumentality thereof, * * *

Further, by express provision of the Personnel Code (Ill. Rev. Stat. 1971, ch. 127, par. 63b108a(2)), the Rules of the Department of Personnel must provide, in the prescribed manner, a pay plan for State employees which provides for a fair and reasonable compensation for services rendered. A State employee is not entitled to compensation for personal services unless said services have been rendered.

Your letter indicates that the subject employees did not perform their work due to the time factor involved; on that basis, I am of the opinion that as State Comptroller you may properly refuse to draw a warrant for payment to those employees. The employees are entitled to be compensated only for whatever services they did, in fact, render.

The nature of your question and the foregoing answer make it unnecessary to consider the applicability of "The Illinois Purchasing Act". Ill. Rev. Stats. 1971, ch. 127, par. 132.1ff.

Very truly yours,

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