



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 05-009

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Applicability of the State
Officials and Employees Ethics
Act to Community College Districts

Geoffrey S. Obrzut
President/CEO
Illinois Community College Board
401 East Capitol Avenue
Springfield, Illinois 62701-1711

Dear Mr. Obrzut:

I have your letter inquiring whether community college districts generally may be considered "units of local government" and also whether community college districts are "State agencies," as that term is defined in the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/1-1 *et seq.* (West 2004)). For the following reasons, it is my opinion that community college districts are "special districts" under the Illinois Constitution of 1970. As such, they would generally constitute "units of local government," except as the General

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Assembly may otherwise provide. Moreover, it is my opinion that community college districts are "State agencies" as that term is used in the Ethics Act.

You first inquire whether community college districts may be considered "units of local government." The phrase "unit of local government" is defined in article VII, section 1, of the Illinois Constitution of 1970 as:

counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

Community college districts are not "counties, municipalities [or] townships," nor have they been designated as a unit of local government by the Public Community College Act (110 ILCS 805/1-1 *et seq.* (West 2004)) or by any other applicable law. The issue, therefore, is whether a community college district is a "special district."

The framers of the Constitution did not delineate the criteria by which a special district may be identified. However, the appellate court articulated the applicable criteria in *Chicago Transit Authority v. Danaher*, 40 Ill. App. 3d 913 (1976), which considered whether the Chicago Transit Authority (the CTA) and the Chicago Housing Authority (the CHA) were special districts for purposes of the Constitution. Both the CTA and the CHA are established pursuant to statute, are designated by statute as municipal corporations, have the power to contract and to purchase and dispose of property, have eminent domain powers, and possess "considerable autonomy." *Danaher*, 40 Ill. App. 3d at 914. Neither has the power to tax, but each has the power to issue bonds and to solicit and accept Federal and State grants. The CTA's

statutory duty is to acquire, construct, own, operate and maintain, for public service, a public transportation system within Cook County. The CHA's duty is to prepare, carry out, construct and operate low income housing projects. The court held:

The words "special district," so far as they are used in reference to units of government, have a technical meaning. A "special district" is a relatively autonomous local government which provides a single service. They have also been characterized as "possessing a structural form, an official name, perpetual succession, and the right to make contracts and to dispose of property." [Citation.] Although there is nothing in the record of the 1970 convention to which we have been referred which defines "special districts," we are firmly convinced that both CTA and CHA possess those features which bring each within the technical meaning of the term "special district," as commonly understood. *Danaher*, 40 Ill. App. 3d at 917.

Article 3 of the Public Community College Act (110 ILCS 805/3-1 *et seq.* (West 2004)) sets forth the powers and duties of the board of trustees of a community college district. Community college districts have the power to tax. 110 ILCS 805/3-1, 3-14 (West 2004). A community college district's board of trustees has exclusive control of the expenditure of all moneys collected for the community college district (110 ILCS 805/3-20.1, 3-20.3, 3-27 (West 2004)), as well as control of the construction of community college buildings and the care and custody of community college property. 110 ILCS 805/3-37, 3-38.1 (West 2004). The board of a community college district may sell personal or real property belonging to the district which is no longer needed for community college purposes. 110 ILCS 805/3-41 (West 2004). Moreover, the board is statutorily authorized to enter into contracts (110 ILCS 805/3-27.1, 3-40, 3-40.1, 3-40.2, 3-42 (West 2004)), to take title to any property acquired for college purposes (110 ILCS

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805/3-36 (West 2004)), and to sue and be sued (110 ILCS 805/3-11 (West 2004)). The board of each community college district is designated a body politic and corporate (110 ILCS 805/3-11 (West 2004)).

Community college district boards possess the key indicia of special districts as set out in *Danaher*. They possess structural form (110 ILCS 805/3-7, 3-10 (West 2004)), an official name (110 ILCS 805/3-11 (West 2004)), perpetual succession (110 ILCS 805/3-7 (West 2004)), and the right to make contracts and to dispose of property. They may sue and be sued independently. Although the approval of the Illinois Community College Board is required for some functions, such as levying additional taxes (110 ILCS 805/3-14.3 (West 2004)) or purchasing land (110 ILCS 805/3-36 (West 2004)), community college districts are nonetheless "relatively autonomous." *Danaher*, 40 Ill. App. 3d at 917. Therefore, it is my opinion that community college districts are "special districts" under the Illinois Constitution of 1970. As such, they are considered "units of local government."

You have also asked whether community college districts are "State agencies" as defined in the Ethics Act. The Ethics Act was enacted as part of a comprehensive ethics reform package intended to regulate ethical conduct, political activities and the acceptance of gifts by executive branch constitutional officers, legislative branch constitutional officers, General Assembly members and State employees. *See generally* 5 ILCS 430/1-1 *et seq.*, 5-5 *et seq.*, 10-10 *et seq.* (West 2004). The Ethics Act defines "State employee" to include "any employee of a

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State agency." *See* 5 ILCS 430/1-5 (West 2004). "State agency" is defined to encompass a broad range of governmental agencies, including:

all officers, boards, commissions and agencies created by the Constitution, whether in the executive or legislative branch; all officers, departments, boards, commissions, agencies, institutions, authorities, *public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act*, and 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; and all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor. "State agency" includes the General Assembly, the Senate, the House of Representatives, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Senate Operations Commission, and the legislative support services agencies. "State agency" includes the Office of the Auditor General. "State agency" does not include the judicial branch. (Emphasis added.) 5 ILCS 430/1-5 (West 2004).

The Ethics Act defines "State agency" to include "public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act." The General Assembly has the power to define statutory terms in any reasonable manner. *Ruva v. Mente*, 143 Ill. 2d 257, 263 (1991). When a statute defines the terms it uses, those terms must be construed according to the definitions contained in the Act. *State Farm Mutual Automobile Insurance Co. v. Universal Underwriters Group*, 182 Ill. 2d 240, 244 (1998). Moreover, a statute must be read as a whole so that no word or paragraph is rendered meaningless. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). Section 2 of the Higher Education Cooperation Act (110 ILCS 220/2 (West

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2004)) does not define "public institutions of higher learning," but does define "public institution of higher education," which includes:

the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, *the public community colleges of this State*, and any other public universities, colleges and community colleges now or hereafter established or authorized by the General Assembly. (Emphasis added.)

Under this language, community college districts clearly fall within the definition of "public institution[s] of higher education." It is equally apparent that the provisions of the Ethics Act that refer to "public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act" contain a scrivener's error. When the Ethics Act is construed in conjunction with the definitions contained in the Higher Education Cooperation Act, the phrase "public institutions of higher learning" must be interpreted to refer to "public institution[s] of higher education." To conclude otherwise would render the relevant provision of the Ethics Act meaningless. Because community college districts constitute "public institution[s] of higher education," it is my opinion that they fall within the definition of "State agency" as that term is used in the Ethics Act.

You have expressed a concern that section 5-5 of the Ethics Act (5 ILCS 430/5-5 (West 2004)) excepts community college districts from certain of the Act's provisions. Section 5-5 provides, in pertinent part:

(a) Each of the following shall adopt and implement personnel policies for all State employees under his, her, or its jurisdiction and control: * * * (viii) the Board of Higher Education, with respect to State employees of public institutions of higher learning except community colleges, and (ix) the Illinois Community College Board, with respect to State employees of community colleges. The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer.

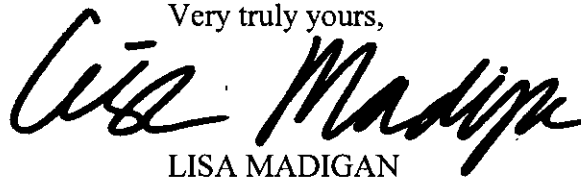
Where statutory language is clear and unambiguous, it must be given effect as written. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 426 (2002). Under the plain language of subsection 5-5(a)(viii), although a community college district is a "public institution of higher education," community college districts are excepted from compliance with the personnel policies developed by the Board of Higher Education. The language of subsection 5-5(a)(ix), however, addresses this issue by placing community college districts and their employees under the jurisdiction of the Illinois Community College Board. Thus, the law requires the Illinois Community College Board to adopt and implement personnel policies in accordance with the Ethics Act which are applicable to all of the employees of the State's community college districts.

You should also note that section 70-5 of the Ethics Act (5 ILCS 430/70-5 (West 2004)) requires "governmental entities," which is defined to include units of local government and school districts, but not State agencies (5 ILCS 430/1-5 (West 2004)), to adopt their own ordinance or resolution regulating the ethical conduct of their officers and employees. Because the definition of "State agency" includes community college districts, it is my opinion that they

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are excluded from the provisions of section 70-5 and are not governmental entities authorized to adopt their own ethics ordinance or resolution. Rather, community college districts and their employees must comply with the Ethics Act's requirements for State agencies and State employees and the personnel policies established by the Illinois Community College Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is written in a cursive, flowing style with some loops and flourishes.

LISA MADIGAN
Attorney General