



OFFICE OF THE ATTORNEY GENERAL

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Jim Ryan

ATTORNEY GENERAL

FILE NO. 99-007

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Implementation of the State
Gift Ban Act by Units of Local
Government and School Districts

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Gentlemen:

I have your letters wherein you pose several questions regarding the implementation of the provisions of the State Gift Ban Act (added by Public Act 90-737, effective January 1, 1999, to be codified at 5 ILCS 425/1 et seq.) by units of local government and school districts. Specifically, you have asked the

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following questions: (1) are units of local government and school districts required to appoint ethics officers; (2) are units of local government and school districts required to establish local ethics commissions; (3) must the complaint procedures set forth in section 60 of the State Gift Ban Act (to be codified at 5 ILCS 425/60) be followed by units of local government and school districts; (4) can a local ethics commission levy fines against persons who file frivolous complaints or who are found to be in violation of a local gift ban ordinance or policy; (5) who is responsible for enforcing a recommendation by a local ethics commission for disciplinary action against an officer or employee, i.e., who is the "ultimate jurisdictional authority"; (6) is it permissible for a State's Attorney to enforce local ordinances which implement the State Gift Ban Act; (7) will the proceedings of local ethics commissions, if established, be subject to the provisions of the Open Meetings Act (5 ILCS 120/1 et seq. (West 1996)); (8) will documents generated or in the possession of a local ethics commission or a local ultimate jurisdictional authority relating to an alleged or actual violation of a local ordinance or policy implementing the State Gift Ban Act be subject to disclosure under the Freedom of Information Act (5 ILCS 140/1 et seq. (West 1996)); and (9) will

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the Attorney General's office render advice to ethics commissions established by units of local government and school districts?
For the reasons hereinafter stated, it is my opinion that: (1) units of local government and school districts are not required to appoint an ethics officer; (2) units of local government and school districts are not required to appoint an ethics commission, if they create a suitable alternative adjudicative system; (3) units of local government and school districts are not required to adopt the complaint procedures set forth in the State Gift Ban Act, if they develop other procedures that are in substantial compliance with the Act; (4) a local ethics commission may impose a fine against a person whom it determines has violated a local ethics ordinance or filed a frivolous complaint; (5) the "ultimate jurisdictional authority" for an employee of a unit of local government or a school district is the public officer or corporate authority that is otherwise authorized to discipline the public employee, and for a public officer it is the corporate authorities of the unit of local government or school district which he or she serves; (6) a State's Attorney may enforce local ordinances which implement the provisions of the State Gift Ban Act, if the county and the unit of local government adopting the ordinance enter into an intergovernmental

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cooperation agreement authorizing such prosecutions and the State's Attorney approves thereof; (7) local ethics commissions are not per se exempt from the provisions of the Open Meetings Act; (8) local ethics commissions or local ultimate jurisdictional authorities are not per se exempt from the provisions of the Freedom of Information Act; and (9) the Attorney General is not the legal advisor for local ethics commissions.

Before responding to your inquiries, it is appropriate to review the provisions of the State Gift Ban Act, particularly as it relates to units of local government and school districts. Enacted by the General Assembly as part of an ethics and campaign reform package, the State Gift Ban Act was intended to address public concerns which had arisen because of the acceptance by State officials of gifts of more than nominal value from individuals or special interest groups who then lobbied the State officials for legislative changes or sought to conduct business with the State. (See Remarks of Rep. Kubik, May 22, 1998, House Debate on House Bill No. 672, at 1.) To avoid the appearance of impropriety created by such conduct, section 10 of the State Gift Ban Act (to be codified at 5 ILCS 425/10) mandates that "[e]xcept as otherwise provided in this Act, no member, officer, employee [of a governmental entity] or judge shall solicit or accept any

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gift from any prohibited source or in violation of any federal or state statute, rule, or regulation. [The Act has subsequently been held unconstitutional, however, as it applies to the judicial branch.] This ban applies to and includes spouses of and immediate family living with the member, officer, employee, or judge." Section 15 of the Act (to be codified at 5 ILCS 425/15) specifies 23 exceptions to the Act's general gift ban proscriptions. Section 20 of the Act (to be codified at 5 ILCS 425/20) sets forth additional exceptions for attendance at certain events. The remainder of the Act creates an administrative process for enforcing the gift ban's requirements.

With regard to the Act's procedural requirements, section 35 thereof (to be codified at 5 ILCS 425/35) requires each officer and the head of each agency of State government to designate an ethics officer, whose duty it is to review statements of economic interest required by the Illinois Governmental Ethics Act (5 ILCS 420/4A-101 et seq. (West 1996)) for certain officers and employees and to provide guidance in the interpretation and implementation of the State Gift Ban Act. Section 45 of the Act (to be codified at 5 ILCS 425/45) provides for the creation of seven State-level ethics commissions, each of which is authorized, inter alia, to investigate, conduct hearings and

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issue recommendations regarding disciplinary action on written complaints alleging a violation of the State Gift Ban Act.

With respect to units of local government and school districts, section 83 of the State Gift Ban Act (to be codified at 5 ILCS 425/83) provides:

"Units of local government; school districts. Within 6 months after the effective date of this Act, units of local government, home rule units, and school districts shall prohibit the solicitation and acceptance of gifts, and shall enforce those prohibitions, in a manner substantially in accordance with the requirements of this Act and shall adopt provisions no less restrictive than the provisions of this Act. Non-salaried appointed or elected officials may be exempted." (Emphasis added.)

Under the language of section 83, all units of local government and school districts are required to adopt their own policies prohibiting the solicitation and acceptance of gifts by July 1, 1999, which policies must be "substantially in accordance with the requirements of" the State Gift Ban Act and "no less restrictive than the provisions of" the State Gift Ban Act. By including this language, the General Assembly has determined that, at a minimum, all full-time, part-time and contractual employees and all salaried appointed and elected officials of units of local government and school districts must be made subject to the prohibitions contained in sections 10, 15 and 20

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of the State Gift Ban Act, although in making their ordinances and policies "no less restrictive than the provisions of" the State Act, units of local government and school districts may elect not to extend all of the exceptions contained in sections 15 and 20. Units of local government and school districts, in enforcing their specific local legislation, are to act "in a manner substantially in accordance with the requirements of this Act". It is clear, therefore, that the General Assembly has vested units of local government and school districts with discretion in formulating policies within the parameters of the Act.

This construction of the provisions of the State Gift Ban Act finds support in the Act's legislative history. During the Senate debate on House Bill 672 (which, as Public Act 90-737, effective January 1, 1999, enacted the provisions in question), the following colloquy between Senator Jacobs and Senator Dillard, the Senate sponsor, provides insight into the intention of the General Assembly in applying the requirements of the State Gift Ban Act to units of local government:

" * * *

SENATOR JACOBS:

It's my understanding, Senator, that this bill not only includes us, but also includes all units of government and local

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government, with the exception of Chicago and Cook County. Is that correct?

* * *

SENATOR DILLARD:

No, Senator Jacobs, that's not correct. What we have done here in the final draft is we have essentially told local governments, 'You're not under our Act, but you have a certain period of time to come up with your own ethics type of ordinance or rules that cannot be weaker than ours, but can be stronger.' And it is up to the Moline City Council to pattern an act or an ordinance off of what we have done here, and we have given them some degree of latitude, although they need to use ours as guidance.

* * *

"

(Remarks of Sen. Jacobs and Sen. Dillard, May 22, 1998, Senate Debate on House Bill No. 672, at 61.)

Clearly, it was the intention of the General Assembly to grant to units of local government and school districts the discretion to develop suitable procedural and administrative policies for enforcing their local prohibitions on the solicitation and acceptance of gifts, and not to require that those policies duplicate the State's procedures in every respect.

Against this background, you have inquired, firstly, whether units of local government and school districts are required to appoint ethics officers. Section 35 of the State

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Gift Ban Act requires that "[e]ach officer and the head of each [State] governmental entity shall designate an Ethics Officer for the office or governmental entity". As previously noted, however, units of local government and school districts are not obligated to incorporate each and every provision of the Act into their local rules and regulations, as long as the overall policy is at least as restrictive as that of the Act.

Section 35 of the State Gift Ban Act provides that it is an ethics officer's duty to "* * * review statements of economic interest and disclosure forms" for officers and employees required to file them and to "* * * provide guidance to members, officers, employees, and judges in the interpretation and implementation of this Act". Thus, the inclusion or exclusion of an ethics officer will not affect the application of the prohibition on the solicitation and acceptance of gifts. Rather, an ethics officer simply acts to review the sufficiency of disclosure statements required under the Illinois Governmental Ethics Act and serves as an information resource regarding the interpretation and implementation of the gift ban prohibitions; the ethics officer has no duty to report violations of the Act and is not otherwise a part of the enforcement process. Conse-

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quently, it is my opinion that units of local government and school districts are not required to appoint ethics officers.

I would suggest, however, that ethics officers have the potential to provide valuable services to the officers and employees of units of local government and of school districts in complying with the requirements of local policies implementing the State Gift Ban Act. Therefore, even in the absence of a requirement to appoint a local ethics officer, units of local government and school districts should give strong consideration to creating such a position.

Your second inquiry concerns a similar issue: whether units of local government and school districts are required to create local ethics commissions similar in function to the State ethics commissions provided for in section 45 of the State Gift Ban Act (to be codified at 5 ILCS 425/45). Initially, I note that it has been suggested that complaints against the officers and employees of units of local government and school districts should be filed with the State legislative ethics commission pursuant to the provisions of section 60 of the State Gift Ban Act. Subsection 60(a) of the Act provides, in pertinent part:

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" * * *

(a) Complaints alleging the violation of this Act shall be filed with the appropriate ethics commission as follows:

(1) If the complaint alleges a violation by an officer or employee of the executive branch of State government, then the complaint shall be filed with the appropriate ethics commission within the executive branch.

(2) If the complaint alleges a violation by a judge or employee of the judicial branch of government, then the complaint shall be filed with the judicial ethics commission.

(3) If the complaint alleges a violation by a member or employee of the legislative branch of State government or any employee not included within paragraphs (1) or (2), then the complaint shall be filed with the legislative ethics commission.

* * *

"

(Emphasis added.)

Under section 5 of the State Gift Ban Act (to be codified at 5 ILCS 425/5), the term "employee" is defined to include "* * * all full-time, part-time, and contractual employees, appointed and elected officials, and directors of a governmental entity", and the phrase "governmental entity" refers to:

" * * *

* * * each office, board, commission, agency, department, authority, institution,

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university, body politic and corporate, administrative unit, and corporate outgrowth of the executive, legislative, and judicial branches of State government, whether created by the Illinois Constitution, by or in accordance with statute, or by executive order of the Governor.

* * *

"

(Emphasis added.)

Under the plain language of subsection 60(a), it is clear that the General Assembly intended that a complaint against any "employee" who is not subject to either the State executive or judicial ethics commission be filed with the State legislative ethics commission. Had the terms "employee" and "governmental entity" not been defined in the Act, the language of subsection 60(a) could arguably be construed to include complaints against officers or employees of units of local government and school districts. It is a fundamental rule of statutory construction, however, that 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 (1998), 182 Ill. 2d 240, 244.) Clearly, units of local government and school districts are not expressly included in the statutory definition of "governmental entity". Moreover, although the General Assembly apparently intended for the definition of "governmental entity" to be construed broadly

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and to include many different types of governmental offices, agencies and entities of the State, where the General Assembly has intended to include units of local government and school districts in such a categorical listing, it has done so by express statutory provision. (See, e.g., 720 ILCS.5/46-1 (West 1997 Supp.) wherein the phrase "governmental entity" is defined to include "* * * units of local government and their officers, [and] school districts * * *"; and Senate Amendment 2 to House Bill 1627 (90th General Assembly) wherein the phrase "governmental entity" is defined to include "* * * units of local government, home rule units, and school districts.") Consequently, it is my opinion that a unit of local government or school district does not constitute a "governmental entity", as that phrase is defined in the State Gift Ban Act. Therefore, the State legislative ethics commission does not have jurisdiction over complaints against the officers and employees of units of local government and school districts.

Turning to the question of whether units of local government and school districts are required to create their own local ethics commissions, the provisions of the Act provide no guidance to units of local government and school districts regarding, inter alia, the necessity for creating a local ethics

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commission or commissions, the duties and powers of any local ethics commission and the composition of any local ethics commission so created, other than to state in section 83 that "units of local government * * * and school districts shall * * * enforce * * * [their local] prohibitions, in a manner substantially in accordance with the requirements of this Act". Based upon this language, it is my opinion that units of local government and school districts are not required to create an ethics commission, if they currently have in place or can create an adjudicatory body with the ability to conduct hearings and which protects the due process rights of persons who are the subject of complaints. Otherwise, the corporate authorities of a unit of local government or a school district will necessarily be required to create a local ethics commission for the unit of local government or school district in order to conform to the requirements of the Act. Although the corporate authorities possess the discretion to determine the number of ethics commission members, their qualifications and the extent of their duties, it is my opinion that to protect the integrity and to maintain the impartiality of local ethics commissions, where established, local ethics commissions should consist of at least three members, should have a bipartisan membership (where officers of the unit of local

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government are selected on a partisan basis), should investigate written complaints alleging a violation of the local policy, should conduct hearings and should issue recommendations regarding disciplinary action in a given case.

You have also inquired whether units of local government and school districts are required to follow the complaint procedures set forth in section 60 of the Act. Nothing in the language of section 60 expressly provides that the complaint procedures of the State Gift Ban Act were intended to be applied at the local level. As previously noted, however, the Act does require local enforcement to be substantially in accordance with the State Act. Consequently, it is my opinion that units of local government and school districts are not required to adopt the complaint procedures set forth in section 60 of the State Gift Ban Act, if they develop alternative procedures that are substantially in accordance with the provisions of section 60. I would caution, however, that the more a unit of local government's or a school district's procedures deviate from the State Act's, the greater the chance that the procedures may be vulnerable to a legal challenge.

Assuming that a unit of local government or school district elects to create a local ethics commission, your fourth

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question concerns whether the local ethics commission so created may impose a fine against a person it determines is in violation of a local ethics ordinance or against a person who knowingly files a frivolous complaint. Section 60 of the State Gift Ban Act authorizes the State ethics commissions to "* * * levy a fine of up to \$5,000 against any person who knowingly files a frivolous complaint alleging a violation of * * *" the State Gift Ban Act. Moreover, section 65 of the Act (to be codified at 5 ILCS 425/65) grants ethics commissions the authority to "* * * impose a fine of up to \$1,000 per violation * * *" of the Act. This question apparently is prompted by concerns that these statutory provisions conflict with those which limit units of local government, in fixing penalties for violations of their ordinances, to sums that are less than the amounts set forth in sections 60 and 65 of the State Gift Ban Act. (See, e.g., 55 ILCS 5/5-1113 (West 1996), fines for county ordinance violations shall not exceed \$500; 65 ILCS 5/1-2-1 (West 1996), fines for municipal ordinance violations shall not exceed \$750; and 70 ILCS 3605/31 (West 1996), fines for Metropolitan Transit Authority ordinance violations shall not exceed \$300.)

It is well established that non-home-rule counties (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v.

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Ronske (1962), 26 Ill. 2d 360, 362), non-home-rule municipalities (Scadron v. City of Des Plaines (1992), 153 Ill. 2d 164, 174), townships (Bellflower Township v. Kumler (1992), 229 Ill. App. 3d 756, 759; Jensen Disposal Co. v. Town of Warren (1991), 218 Ill. App. 3d 483, 491), special districts (Ill. Const. 1970, art. VII, sec. 8; Village of Glencoe v. Metropolitan Sanitary Dist. (1974), 23 Ill. App. 3d 868, 870) and school districts (Ill. Const. 1970, art. VII, sec. 8; People ex rel. Smith v. Wabash Ry. Co. (1940), 374 Ill. 165, 172; 1991 Ill. Att'y Gen. Op. 223) possess only those powers that are expressly granted to them by the Constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. The State Gift Ban Act does not expressly grant a local ethics commission established by a unit of local government or a school district the authority to impose a fine in an amount greater than that generally authorized by statute. As previously discussed, however, section 83 of the State Gift Ban Act expressly requires units of local government and school districts to "adopt provisions no less restrictive than the provisions of" the Act when enforcing its prohibitions. Based upon this language, it is my opinion that the General Assembly has impliedly granted units of local government and school

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districts the authority to impose a fine of up to \$1,000 per violation of a local ordinance or policy adopted pursuant to the State Gift Ban Act. (See Village of Mundelein v. Hartnett (1983), 117 Ill. App. 3d 1011; Village of Spring Grove v. Doss (1990), 202 Ill. App. 3d 585.) To conclude otherwise would necessarily result in local ethics commissions or local enforcement bodies possessing enforcement authority that is less restrictive than that required by the provisions of the Act. Similarly, a local ethics commission will necessarily possess the implied authority to levy a fine of up to \$5,000 against persons who file frivolous complaints.

Further, you have inquired who is responsible, in those circumstances in which a local ethics commission recommends disciplinary action against an officer or employee, for enforcing the recommendation of the local ethics commission, i.e., who is the "ultimate jurisdictional authority" for a unit of local government or a school district? Initially, I must caution that under the pertinent Illinois statutes and constitutional provisions, it is clear that the language of subsection 65(4) of the State Gift Ban Act is not a grant of authority to an ultimate jurisdictional authority to impeach or remove an elected officeholder from office. Rather, subsection 65(4) provides only that

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with respect to State officers, a violation of the State Gift Ban Act may justify removal from office pursuant to the provisions of article IV, section 14 of the Illinois Constitution of 1970.

Since there is no corresponding constitutional or statutory provision establishing a procedure for impeaching or removing from office local elected officials, it is my opinion that local ordinances and policies implementing the State Gift Ban Act may not include a provision for the removal or impeachment of local elected public officers. For the remaining disciplinary recommendations regarding an elected official's violation of a local gift ban ordinance or policy, the governing body of the unit of local government or school district which the official serves will constitute the officer's "ultimate jurisdictional authority".

The General Assembly has not specified who constitutes the "ultimate jurisdictional authority" for the employees of a unit of local government or school district. It is clear, however, that most county officers have been granted the express power to control the internal operations of their offices, including the authority to make decisions regarding personnel (see, e.g., 55 ILCS 5/3-1004 (West 1996); 55 ILCS 5/3-2003.2 (West 1996); 55 ILCS 5/3-3003 (West 1996); 55 ILCS 5/3-5005.2

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(West 1996); 55 ILCS 5/3-6018 (West 1996); and 55 ILCS 5/3-10005.1 (West 1996)). Moreover, there are statutory processes currently in place for the removal from service of specified employees of units of local government and school districts (see, e.g., 55 ILCS 5/3-8014 (West 1996), Sheriff's Merit System; 65 ILCS 5/10-2.1-1 et seq. (West 1996), Municipal Civil Service System; 70 ILCS 705/16.13b (West 1996), officer's and member's of a fire department of a fire protection district; and 105 ILCS 5/24-12 (West 1997 Supp.), teachers in contractual continued service). Based upon these and similar statutory provisions, it is my opinion that the "ultimate jurisdictional authority" for an employee of a local unit of government or school district is the elected or appointed official, or the subsidiary body of a unit of local government or school district, which, independent of the provisions of the State Gift Ban Act, has the power to discipline the particular employee.

You have also inquired whether a State's Attorney may enforce gift ban ordinances adopted by units of local government, other than the county, or by school districts. Sections 3 and 5 of the Intergovernmental Cooperation Act (5 ILCS 220/3 (West 1997 Supp.); 5 ILCS 220/5 (West 1996)) respectively provide:

"§ 3. Intergovernmental agreements.
Any power or powers, privileges or authority

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exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment. * * *

"§ 5. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

Moreover, article VII, section 10 of the Illinois Constitution of 1970 provides, in pertinent part:

"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay

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costs and to service debt related to inter-
governmental activities.

* * *

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In opinion No. S-1217 (1977 Ill. Att'y Gen. Op. 31), Attorney General Scott reviewed the provisions of sections 3 and 5 of the Intergovernmental Cooperation Act and article VII, subsection 10(a) of the Illinois Constitution and concluded that a county board, with the approval of the State's Attorney, could enter into a contract with a municipality pursuant to which the State's Attorney's office would prosecute municipal ordinance violations.

As used in article VII of the Illinois Constitution of 1970, the phrase "unit of local government" includes "counties, municipalities, townships, special districts, and units, designated as units of local government by law * * *". (Ill. Const. 1970, art. VII, sec. 1.) Similarly, as used in the Intergovernmental Cooperation Act, the term "public agency" includes, inter alia, "any unit of local government as defined in the Illinois Constitution of 1970, [and] any school district * * *". (5 ILCS 220/2 (West 1996), as amended by Public Act 90-636, effective July 24, 1998.) Under the statutory provisions quoted immediately above, public agencies and units of local government are authorized to contract among themselves for the joint exercise of

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various powers and functions. Consequently, it is my opinion that a county may enter into an intergovernmental cooperation agreement with another unit of local government pursuant to which the State's Attorney's office would prosecute violations of that unit's gift ban policies. Any contract so providing, however, must have the approval of the State's Attorney. In the absence of such an agreement, a State's Attorney is under no statutory obligation to prosecute violations of any local ordinances or policies except those of the county. (See 55 ILCS 5/3-9005 (West 1996).)

Assuming the appointment of a local ethics commission, your seventh question regards whether the local ethics commission would be subject to the provisions of the Open Meetings Act. Section 2 of the Open Meetings Act (5 ILCS 120/2 (West 1997 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a". As used in the Open Meetings Act, the phrase "public body" is defined to include:

" * * *

* * * all legislative, executive, administrative or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and

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any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. * * * 'Public body' does not include a child death review team established under the Child Death Review Team Act or an ethics commission, ethics officer, or ultimate jurisdictional authority acting under the State Gift Ban Act as provided by Section 80 of that Act." (Emphasis added.) (5 ILCS 120/1.02 (West 1997 Supp.), as amended by Public Act 90-737, effective January 1, 1999.)

Section 80 of the State Gift Ban Act (to be codified at 5 ILCS 425/80) provides that "[t]he proceedings conducted and documents generated under this Act are exempt from the provisions of the Open Meetings Act and the Freedom of Information Act".

Under these provisions, it is clear that the State ethics commissions, ethics officers and ultimate jurisdictional authorities have been exempted from the provisions of the Open Meetings Act, because they are "acting under the State Gift Ban Act". The State Gift Ban Act, however, does not prescribe the acts of local ethics commissions, local ethics officers or local ultimate jurisdictional authorities. Rather, these officers or entities will act under local ordinances or policies adopted in accordance with the requirements of the State Act. Consequently, it is my opinion that local ethics commissions are not exempt per

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se from the provisions of the Open Meetings Act. In so concluding, I do not discount the possibility that local ethics commissions may nevertheless hold closed meetings in accordance with the provisions of the Open Meetings Act. Specifically, subsections 2(c)(1) and 2(c)(4) of the Act (5 ILCS.120/2(c)(1), (4) (West 1997 Supp.)), as amended by Public Act 90-737, effective January 1, 1999) respectively authorize public bodies to hold closed meetings to consider "[t]he * * * employment * * * discipline, performance, or dismissal of specific employees of the public body, including hearing testimony on a complaint lodged against an employee to determine its validity" and "[e]vidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body * * *".

A similar conclusion is mandated with respect to the issue of whether records and documents generated by or in the possession of a local ethics commission or an ultimate jurisdictional authority are subject to the provisions of the Freedom of Information Act. The principal mandate of the Freedom of Information Act is found in subsection 3(a) of the Act (5 ILCS 140/3(a) (West 1997 Supp.)), which provides that "[e]ach public body shall make available to any person for inspection and

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copying all public records * * *". Section 7 of the Freedom of Information Act (5 ILCS 140/7 (West 1997 Supp.), as amended by Public Acts 90-655, effective July 30, 1998 and 90-737, effective January 1, 1999) exempts from inspection and copying "[i]nformation the disclosure of which is exempted under Section 80 of the State Gift Ban Act". As previously noted, section 80 exempts "documents generated under [the State Gift Ban] Act * * * from the provisions of * * * the Freedom of Information Act". As with the Open Meetings Act, records used, received, possessed or under the control of a local ethics commission are not generated "under [the State Gift Ban] Act", but under local ordinance or policy. Consequently, it is my opinion that the records of a local ethics commission or an ultimate jurisdictional authority are not exempt per se from disclosure under the Freedom of Information Act, but a local ethics commission or an ultimate jurisdictional authority may avail itself of the exemptions set forth in subsections 7(1)(b)(ii) and 7(1)(c) of the Freedom of Information Act (5 ILCS 140/7(1)(b)(ii), (1)(c) (West 1997 Supp.), as amended by Public Act 90-737, effective January 1, 1999) in the appropriate circumstances.

Lastly, you have inquired whether, in those instances in which a unit of local government or a school district estab-

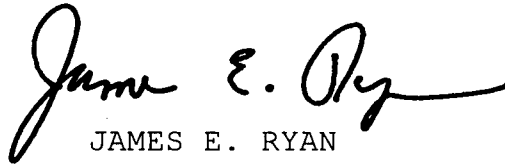
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lishes a local ethics commission, the Attorney General will provide legal advice to local ethics commissions so created. Section 55 of the Act (to be codified at 5 ILCS 425/55) authorizes each of the seven State ethics commissions to request legal advice from the Attorney General. This is in accord with the Attorney General's common law duty as "* * * the sole official advisor of the executive officers and of all boards, commissions, and departments of the State * * *" (Fergus v. Russel (1915), 270 Ill. 304, 342; People ex rel. Scott v. Briceland (1976), 65 Ill. 2d 485, 494) and his statutory duty to advise State officers and State agencies on matters related to their official duties. (See 15 ILCS 205/4 (West 1996).) Nothing in the provisions of the State Gift Ban Act, however, suggests any intention on the part of the General Assembly to include ethics commissions created by units of local government and school districts within the categories of public bodies and officers that the Attorney General advises. Consequently, it is my opinion that the Attorney

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General is under no statutory obligation to provide legal advice
to local ethics commissions.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the printed name and title.

JAMES E. RYAN
ATTORNEY GENERAL