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STATE OF ILLINOIS
SPRINGFIELD

October 21, 1971

FILE NO. S-358

APPROPRIATIONS:
Clerical error.

Honorable Michael J. Howlett
Auditor of Public Accounts
State of Illinois
201 State House
Springfield, Illinois

Dear Auditor Howlett:

I have your letter of August 31, 1971, wherein you ask the following questions:

"House Bill 2774, passed by the 77th General Assembly, and approved by the Governor on July 31, 1971, is an Act to make appropriations for certain claims against the State of Illinois in conformity with awards made by the Court of Claims.

"Your attention is directed to Section 2 of the Act which provided for appropriation of \$1,461,150.31 from the General Revenue Fund to pay certain claims in conformity with awards and recommendations made by the Court of Claims.

"The details which follow to support the appropriation of \$1,461,150.31 are in error in that item #5841, appearing on page 11, with reference to debt services rendered to the Department of Public Aid by the Salvation Army should be stated as \$91.00 instead of \$92.00 as indicated in the statute.

"In addition, item 5419 and item 5565, in the respective amounts of \$78,000.00 and \$2,910.70, which appear on page 18 of the appropriation Bill, appear to have been added in the detail and not reflected in the sum appropriated in Section 2 amounting to \$1,461,150.31.

"The following questions are submitted for your consideration and advice:

(1) Whether or not an amount of \$1,542,062.01 should be considered appropriated rather than the \$1,461,150.31 representing the total indicated in the statute on the ground that the General Assembly passed the detailed amount itemized in the statute.

(2) Whether or not payment may be made for all detail items which accumulate to a total of the amount indicated as appropriated as \$1,461,150.31.

(3) What disposition should be made of the three items enumerated above which account for the difference between the amount indicated as appropriated of \$1,461,150.31 and \$1,542,062.01 representing the total of the individual claims."

The sum of \$1,461,150.31 set forth in section 2 of House Bill No. 2774 is obviously erroneous as it does not

coincide with the correct total of the detailed items enumerated in section 2. (The items enumerated in section 2 total \$1,542,062.01.) The discrepancy contained in the act is obviously a clerical error. A comparison of the awards of the Court of Claims and the enumerated items on the enrolled and engrossed copy of House Bill No. 2774 reveals that this error is, in fact, the result of more than one clerical error as follows:

- (1) Item No. 5841 listed as \$92.00 should have been \$91.00.
- (2) When items No. 5419 in the amount of \$78,000.00 and No. 5568 in the amount of \$2,910.70 were added to the Bill by amendment they were not added to the stated total.

"Courts have permitted the substitution of one word for another: where it is necessary to make the act harmonious or to avoid repugnancy or inconsistency, where the word to be substituted can be gathered from the context of the act, where the word to be substituted is found in the enrolled act, or in the act as published, or in the act as amended, or in the title or subtitle, or by reference to other statutes, or the original bill, where it is obvious that the word used in the act is the result of clerical error, or mistake, where the substitution will make the act sensible, or give it force and effect, or make it

rational, * * *." Vol. 2, Sutherland, Statutory Construction 3d 3d., sec. 4925, pages 460, 462.

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." (Emphasis supplied) Vol. 2, Sutherland, Statutory Construction 3d ed., sec. 4705, page 339.

"Before the true meaning of the statute can be determined consideration must be given to the problem in society to which the legislature addressed itself, prior legislative consideration of the problem, the legislative history of the statute under litigation, and to the operation and administration of the statute prior to litigation." Vol. 2, Sutherland, Statutory Construction 3d ed., sec. 4505, page 321.

Using the criteria as set down in Sutherland, section 4505 above, we find: (a) the problem in society to which the legislature addressed itself is that certain claimants have been wronged by the State or have other legitimate causes of action against the State, and the legislature in its effort to live up to its sovereign responsibility passed House Bill No. 2774 for the express

purpose of enabling the claimants enumerated in the Bill to receive their just payments. The intent of the legislature was obviously not to appropriate the stated total, but rather to appropriate a sum sufficient to make the payments to the claimants enumerated.

(b) Prior legislative consideration of the problem has through the years been to appropriate sufficient funds to pay all claims against the State recommended for payment by the Court of Claims through similar legislation.

(c) The legislative history of this statute (House Bill No. 2774) is that it was drafted in accordance with procedures long used for prior similar statutes routinely used for the purpose of making appropriations necessary to pay claims against the State, but in the instant case two clerical errors were made in the final draft of the Bill.

(d) The operation and administration of similar previous statutes and of this statute up until the discovery of the discrepancy (there has been no litigation) was that it was administered as a mechanical tool necessary for the operation of the Auditor's office in making the payments to the enumerated claimants.

In summary, the passage of these statutes has been historically a routine formality where there was never any debate of the stated total as it merely represented the sum of the itemized appropriations.

"A statute is a solemn enactment of the State acting through its legislature and it must be assumed that this process achieves an effective and operative result." Vol. 2, Sutherland, Statutory Construction, 3d ed., sec. 4510, page 327.

"The cardinal rule of statutory construction is that the court should ascertain from the entire statute the intention to be accomplished by the enactment. When that intention is clear it should be carried out even though it may be necessary to strike out or insert certain words." State Board of Education v. Commission of Finance, 122 Utah, 164, 247 P. 2d 435 (1952).

"While the courts are without legislative power, the rule is recognized generally that whenever it is manifest from the face of an act that an error was made in the use of words, the courts will treat it as corrected to express the legislative will, [citations] [and] words and phrases which, if given effect, might defeat the manifest purpose of the statute, will be eliminated or regarded as 'surplusage'." State v. Holmes, 114 Mont. 372, 136 P. 2d 220 (1943).

In my opinion the stated total (\$1,461,150.31) in House Bill No. 2774 should be considered as (a) surplusage, (b) eliminated or (c) corrected to \$1,542,062.01, and payments

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made to all claimants enumerated in the amounts awarded by
the Court of Claims in order that the intent of the legislature
not be frustrated by obvious clerical error.

Very truly yours,

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