



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



February 4, 1992

FILE NO. 92-003

GOVERNMENTAL ETHICS  
AND CONFLICT OF INTEREST:  
General Assembly Member Employed  
by Regional Superintendent of Schools

Honorable W. Charles Grace,  
State's Attorney, Jackson County  
Jackson County Courthouse  
Murphysboro, Illinois 62966

Dear Mr. Grace:

I have your letter wherein you inquire whether a member of the General Assembly is prohibited by section 11.1 of the Illinois Purchasing Act (Ill. Rev. Stat. 1989, ch. 127, par. 132.11-1) from receiving compensation as an educational consultant for, or grant employee of, a regional superintendent of schools. For the reasons hereinafter stated, it is my opinion that a member of the General Assembly may serve as a grant employee or an educational consultant for a regional superintendent of schools without violating that Act.

Section 11.1 of the Illinois Purchasing Act provides,  
in pertinent part:

"It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices of State government, or who is an officer or employee of the Illinois Building Authority or the Illinois Toll Highway Authority, or who is the wife, husband or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper or for any services, materials or supplies, which will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Illinois Building Authority or the Illinois Toll Highway Authority. Payments made for a public aid recipient are not payments pursuant to a contract with the State within the meaning of this Section.

\* \* \*

This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General Assembly, his or her spouse, minor child or any combination of such persons, if that contract was in existence before his or her election or employment as such officer, member, or employee. Such a contract is void, however, if it cannot be completed within 6 months after such officer, member, or employee takes office, or is employed.

This Section does not apply to (1) a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the University of Illinois, Southern Illinois University or any institution under the control of the Board of Governors of State Colleges and Universities or under the control of

the Board of Regents or (2) a contract for personal service of a wholly ministerial character including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly. \* \* \*

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(Emphasis added.)

Section 11.1 of the Illinois Purchasing Act prohibits members of the General Assembly from having or acquiring a direct pecuniary interest in any contract which is satisfied by the payment of funds appropriated by the General Assembly. In construing this section, it is important to recognize that the language of section 11.1 of the Act was derived from former section 12 of "An Act to revise the law in relation to state contracts" (the State Contracts Act) (see Ill. Rev. Stat. 1965, ch. 127, par. 75) (1970 Ill. Att'y. Gen. Op. 148; 1976 Ill. Att'y. Gen. Op. 313), which had been long held to apply only to those contracts in which the State of Illinois was a party. (1970 Ill. Att'y. Gen. Op. 148, 151.)

Based upon the Illinois courts' interpretation of section 12 of the State Contracts Act and the incorporation of similar language in the provisions of the Illinois Purchasing Act, Attorney General Scott determined that section 11.1 of the Illinois Purchasing Act should also be construed to apply only to those contracts which are entered into directly with the

State. Thus, in opinion S-212 (1970 Ill. Att'y. Gen. Op. 148), he concluded that the Acting Director of the Department of Conservation did not violate the Illinois Purchasing Act by having a financial interest in a magazine which accepted advertisements from voluntary tourism councils which, in turn, were reimbursed for their advertising costs by the State Department of Business and Economic Development, because there was no direct contractual agreement between the magazine and the State. In reaching this conclusion, he quoted Electrical Contractors Association v. Illinois Building Authority, 33 Ill. 2d 587, 594:

"\* \* \* if the receipt of State funds appropriated to a State agency and by it paid to a third party constitutes the expenditure \* \* \* of State funds by the third party, the provisions of the Purchasing Act may well be extended, at least arguably, to a point never contemplated nor intended by the General Assembly. It seems to us clear that the legislative intent was not to subject such third party to the Purchasing Act requirements in that party's use of the funds so derived, but to apply the Purchasing Act to the use of the appropriated funds by those to whom the appropriation is made. \* \* \* \*"

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(Emphasis added.)

Similarly, in opinion S-1165 (1976 Ill. Att'y. Gen. Op. 313), my predecessor concluded that a subcontractor did not have a direct pecuniary interest in a contract between a general contractor and a State agency, because a subcontractor has no direct claim on the funds that the agency has agreed to

pay to the general contractor. Rather, the opinion noted that the subcontractor has merely an interest or lien contingent upon the general contractor's default. Therefore, it was determined that a member of the General Assembly did not violate the Illinois Purchasing Act by entering into a subcontract with a general contractor who had contracted with a State agency. I concur in these conclusions and the analysis employed therein.

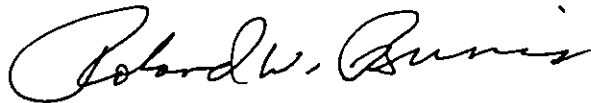
In reviewing the State of Illinois' educational grant program, it appears that the General Assembly appropriates moneys for various educational grant programs to the State Board of Education or to other state agencies, as part of its annual budget. The State agency charged with administering the particular grant program reviews grant applications submitted by competing school districts and regional superintendents of schools and awards grants to the qualifying applicants. The grant recipients then employ necessary services to administer and carry out the program or grant requirements.

As previously indicated, there must be a direct contractual relationship between a member of the General Assembly and a State agency in order to constitute a violation of section 11.1 of the Illinois Purchasing Act. Under the general grant procedures set forth above, there is an absence of a direct contractual relationship between the State and the

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grant employee or consultant. Although the employee or consultant has a direct interest in his or her contract with the school district or regional superintendent's office, there is no direct interest in the grant agreement between the State Board of Education or other granting agency and the local administrator or grant recipient. Consequently, it is my opinion that a member of the General Assembly may serve as a grant employee of, or educational consultant to, a regional superintendent of schools without violating section 11.1 of the Illinois Purchasing Act.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name.

ROLAND W. BURRIS  
ATTORNEY GENERAL