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SPRINGFIELD

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FILE NO. S-1359

STATE EMPLOYEES:  
Payment of the Prevailing  
Rate of Wages to University  
of Illinois Employees

Honorable Frank D. Savickas  
Senator, 27th District  
Chairman, Labor and Commerce Committee  
335 Capitol Building  
Springfield, Illinois 62706

Dear Senator Savickas:

I have your letter wherein you ask whether Public Act 79-1091, entitled "AN ACT in relation to the rate of pay for State employees who are not subject to the 'Personnel Code'" (Ill. Rev. Stat. 1977, ch. 127, par. 391), is applicable to University of Illinois employees who are covered by the University Civil Service System Act. (Ill. Rev. Stat. 1977, ch. 24 1/2, par. 38b1 et seq.) It is my opinion that the Act is applicable to those employees.

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Public Act 79-1091 reads as follows:

"Whenever any State officer, agency or authority, whether funded by State taxes or otherwise, employs an individual in a capacity or position of such a character as would be subject to rules or regulations of the Department of Personnel requiring the payment of the prevailing rate of wages to those holding such a position or serving in such a capacity if that employment were subject to the 'Personnel Code', the State officer, agency or authority shall pay that individual at the prevailing rate, notwithstanding the nonapplicability of the 'Personnel Code'."

The cardinal rule in construing a statute is to give effect to the intent of the legislature. (Merrill v. Drazek (1975), 62 Ill. 2d 1, 6.) In determining legislative intent, it is not only proper, but often necessary, to consider the provisions of other statutes relating to the same subject matter. Petterson v. City of Naperville (1956), 9 Ill. 2d 233, 243.

A consideration of the provisions of the Personnel Code (Ill. Rev. Stat. 1977, ch. 127, par. 63b101 et seq.) makes it clear that the application of Public Act 79-1091 to University of Illinois employees who are covered by the University Civil Service System is within the Act's legislative intent. All offices and positions in the service of the State of Illinois are subject to the provisions of the Personnel Code unless specifically exempted in the Code. (Ill. Rev. Stat. 1977, ch. 127, par.

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63b104.) Section 4c of the Code (Ill. Rev. Stat. 1977, ch. 127, par. 63b104c) exempts certain employees, including University of Illinois employees covered by the University Civil Service System Act, from the provisions of the Personnel Code. Because the Code does not apply to those exempted employees, they are not subject to the provisions in the Department of Personnel's Pay Plan concerning the requirement that employees in specified positions are to be paid at the prevailing rate of wages. In light of the general exemption in section 4c of the Code, the scope of the extension in Public Act 79-1091 of the Pay Plan's prevailing rate requirement to State employees, "notwithstanding the nonapplicability of the 'Personnel Code'," becomes clear.

The scope of the extension of the Pay Plan's prevailing rate requirement must be at least as broad as the exemption in section 4c of the Personnel Code. This creates a comprehensive scheme by which all State employees in prevailing rate positions are paid at the prevailing rate of wages. The creation of such a comprehensive scheme was the apparent intention of the legislature in enacting Public Act 79-1091. The legislative intent requires that the Act apply to all State employees who are exempted from

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the application of the Personnel Code. This legislative intent would be thwarted by the exclusion of University employees from the Act's provisions.

Therefore, the answer to your question is that Public Act 79-1091 is applicable to University of Illinois employees who are covered by the University Civil Service System Act.

It may be argued that because Public Act 79-1091 applies to the employees of State agencies, it does not apply to the employees of the University of Illinois. The term "State agency" does not have a clear, unequivocal meaning. In some contexts the term refers to the University of Illinois; in other contexts it does not. The Supreme Court in People v. Barrett (1943), 382 Ill. 321, at 347, stated, "In the sense that it is a department or branch of the State government, the University of Illinois is not an agency or instrumentality of the State. It is a separate corporate entity, which functions as a public corporation." Although the University is not a State agency in the sense that it is a department or branch of the State government, it is a State agency in other senses. For example, the court in Barrett stated at page 343 that the University of Illinois "functions solely as an agency of the State for the purpose of the operation and administration

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of the university, for the State." Many statutes expressly include the University of Illinois within the term "State agency." (Ill. Rev. Stat. 1977, ch. 15, par. 301-7; ch. 122, par. 698.1; ch. 127, par. 132.3.) Other statutes expressly exclude the University from the definition of "State agency." Ill. Rev. Stat. 1977, ch. 127, pars. 63b13.1, 132.101 and 132.202.

The term "State agency" is not defined in Public Act 79-1091. Without a clear, statutory definition of the term, the question of whether "State agency" in Public Act 79-1091 includes the University of Illinois depends on the purpose of the Act. As explained above, the Act was intended to apply to the employees of the University of Illinois. It necessarily follows that in enacting Public Act 79-1091 the legislature intended to include the University of Illinois within the term "State agency."

Very truly yours,

A T T O R N E Y   G E N E R A L