



OFFICE OF THE ATTORNEY GENERAL
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ATTORNEY GENERAL

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STATE MATTERS:
Effect of the State Mandates
Act on Counties' and Municipalities'
Duty to Provide Mammogram
Screening

Honorable Barbara Flynn Currie
Spokesperson, House Rules Committee
State Representative, 25th District
5225 South Harper Avenue
Chicago, Illinois 60615

Dear Representative Currie:

I have your letter wherein you inquire whether, pursuant to sections 5-1069 and 5-1069.1 of the Counties Code (55 ILCS 5/5-1069 and 5/5-1069.1 (West 1994)) and sections 10-4-2 and 10-4-2.1 of the Illinois Municipal Code (65 ILCS 5/10-4-2, 5/10-4-2.1 (West 1994)), self-insured counties and municipalities, including home-rule-units, must provide mammogram screening for female employees over 35 years of age if the General Assembly has not appropriated funds to reimburse the unit of government for the cost of meeting this statutory mandate. For the reasons hereinafter stated, it is my opinion that sections 5-1069 and 5-1069.1 of the Counties Code and sections 10-4-2 and 10-4-2.1 of

Honorable Barbara Flynn Currie - 2.

the Illinois Municipal Code create a personnel mandate, within the meaning of the State Mandates Act (30 ILCS 805/1 et seq. (West 1994)). Therefore, if that personnel mandate is not exempted from reimbursement under the State Mandates Act or if no appropriation for reimbursement is made by the General Assembly, then compliance with the mandate is not required.

The State Mandates Act, inter alia, limits the imposition of certain categories of State-mandated programs or expenses upon local government, as defined in subsection 3(a) of the Act (30 ILCS 805/3(a) (West 1994)), without concomitant State fiscal assistance. A State mandate, as defined in subsection 3(b) of the State Mandates Act (30 ILCS 805/3(b) (West 1994)), is "* * * any State-initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, * * *." Section 6 of the Act (30 ILCS 805/6 (West 1994)) requires the State to reimburse local governments, within the categories set forth therein, for increased costs accruing to local governments as a result of some, but not all, types of State mandates. Section 8 of the Act (30 ILCS 805/8 (West 1994, as amended by Public Act 89-304, effective August 11, 1995)) relieves local governments from the obligation of implementing reimbursable mandates for which reimbursement, as required by section 6, is not provided. (See Board of Trustees of Community College District No. 508 v. Burriss

Honorable Barbara Flynn Currie - 3.

(1987), 118 Ill. 2d 465, 469; Board of Education of Maine Township High School District 207 v. State Board of Education (1985), 139 Ill. App. 3d 460, 463; 1984 Ill. Att'y Gen. Op. 47, 48.) Although a particular State action may fall within the broad definition of the phrase "State mandate", the State is not obligated to reimburse local governments, nor is a local government relieved from compliance with a mandate, unless the mandate falls within a category requiring reimbursement under section 6 of the Act.

Section 6 of the State Mandates Act provides:

"State Reimbursement to Local Government For Increased Costs Arising From Certain Mandates. (a) Any increased costs accruing to local governments as a direct result of mandates dealing with the organization and structure of local government or due process mandates, as defined in subsections (c) and (d), respectively, of Section 3 above, are not reimbursable by the State.

(b) At least 50%, but not more than 100% of the increase in costs of a local government directly attributable to a service mandate as defined in subsection (f) of Section 3 enacted by the General Assembly or established administratively after the effective date of this Act shall be reimbursed by the State * * *.

(c) 100% of the loss in revenue of a local government directly attributable to a mandated classification or exemption of property for purposes of ad valorem real property taxation enacted after the effective date of this Act shall be reimbursed by the State. The loss of revenue does not include potential revenue from property of a type which was not being assessed and taxed on January 1, 1980.

(d) Except for a State mandate that affects personnel qualifications for local employees, the salaries and wages of which are financed under a State program, and except as provided in subsection (e) below, any personnel mandate as defined in subsection (h) of Section 3 above enacted by the General Assembly or established administratively after the effective date of this Act shall be reimbursed by the State to the extent of increased costs incurred by local governments directly attributable to such mandate.

(e) All of the increased costs of a local government directly attributable to a mandated increase in public employee retirement benefits which is enacted after the effective date of this Act and which has the effect of elevating retirement benefits of local government employees shall be reimbursed by the State; except that any increased costs of a local government attributable to Public Act 83-152, 83-374, 83-375, 83-528, 83-558, 83-661, 83-664, 83-737, 83-772, 83-773, 83-780, 83-792, 83-793, 83-802, 83-810, 83-812, 83-823, 83-827 or 83-869 are not reimbursable by the State.

(f) After the effective date of this Act, any bill filed and any amended bill that creates or enlarges a State mandate of the type specified in subsections (f), (g) and (h) of Section 3, shall have provided and identified for it an appropriation of an amount necessary to provide the reimbursement specified above unless a statement, stating the specific reasons for such exclusion is set out in the bill or amendment as provided in subsection (a) of Section 8.

(g) If a local government or combination of local governments has been providing a service at its option which is subsequently mandated by the State, the State shall pay them for the subsequent costs of such program and the local government or governments shall

Honorable Barbara Flynn Currie - 5.

proportionately reduce its or their property tax extensions by the amount that the State payment replaces property tax revenues which were being expended on such service. * * *

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"

(Emphasis added.)

Subsection 3(h) of the State Mandates Act (30 ILCS 805/3(h) (West 1994)) defines a "personnel mandate" as follows:

"

* * *

(h) * * * a State mandate concerning or affecting local government (1) salaries and wages; (2) employee qualifications and training (except when any civil service commission, professional licensing board, or personnel board or agency established by State law sets and administers standards relative to merit-based recruitment or candidates for employment or conducts and grades examinations and rates candidates in order of their relative excellence for purposes of making appointments or promotions to positions in the competitive division of the classified service of the public employer served by such commission, board, or agency); (3) hours, location of employment, and other working conditions; and (4) fringe benefits including insurance, health, medical care, retirement and other benefits." (Emphasis added.)

Subsection 6(d) of the Act requires the State to reimburse local governments for those costs directly attributable to a personnel mandate created by the General Assembly after January 1, 1981. Under subsection 3(h) of the Act, the term "personnel mandate" applies, inter alia, to any State-initiated statutory action that requires a county or a municipality to expand its fringe benefits, including insurance, health and

Honorable Barbara Flynn Currie - 6.

medical care benefits, in such a way as to necessitate additional expenditures from local revenues. (30 ILCS 805/3(b), (h)(4) (West 1994).) Each of the four subjects included within the definition - wages, employee qualifications, working conditions and fringe benefits - relates to the term "local government" preceding that list. Thus, subsection 3(h) properly includes only State mandates affecting the relationship between local governments and their employees.

Public Act 87-780, effective November 7, 1991, amended both the Counties Code and the Illinois Municipal Code to require those units of local government to expand their employee insurance coverage. In this regard, subsection 5-1069(d) and section 5-1069.1 of the Counties Code respectively provide:

" * * *

(d) If a county, including a home rule county, is a self-insurer for purposes of providing health insurance coverage for its employees, the insurance coverage shall include screening by a low-dose mammography for all women 35 years of age or older for the presence of occult breast cancer unless the county elects to provide mammograms itself under Section 5-1069.1. The coverage shall be as follows:

(1) A baseline mammogram for women 35 to 39 years of age.

(2) A mammogram every one to 2 years, even if no symptoms are present, for women 40 to 49 years of age.

(3) An annual mammogram for women 50 years of age or older.

Those benefits shall be at least as favorable as for other radiological examinations and subject to the same dollar limits, deductibles, and co-insurance factors. For purposes of this subsection, 'low-dose mammography' means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, screens, and image receptors, with an average radiation exposure delivery of less than one rad mid-breast, with 2 views for each breast. The requirement that mammograms be included in health insurance coverage as provided in this subsection (d) is an exclusive power and function of the State and is a denial and limitation under Article VII, Section 6, subsection (h) of the Illinois Constitution of home rule county powers. A home rule county to which this subsection applies must comply with every provision of this subsection.

* * *

"

"A county, including a home rule county, that does not provide insurance coverage of mammograms under Section 5-1069 shall itself provide or cause to be provided to its employees mammograms that meet the requirements set forth in the Section. The requirement that mammograms be provided by counties as provided in this Section is an exclusive power and function of the State and is a denial and limitation under Article VII, Section 6, subsection (h) of the Illinois Constitution of home rule county powers. A home rule county to which this Section applies must comply with every provision of this Section."

The provisions of sections 10-4-2(d) and 10-4-2.1 of the Illinois Municipal Code are virtually identical to those set forth above, except that the language thereof refers to municipalities rather than counties.

Honorable Barbara Flynn Currie - 8.

As previously discussed, the term "personnel mandate" applies to any State-initiated statutory action that requires a county or a municipality to expand fringe benefits for its employees, including insurance, health and medical care benefits, in such a way as to necessitate additional expenditures from local revenues. (30 ILCS 805/3(b), (h)(4) (West 1994).) Under the provisions of subsection 5-1069(d) of the Counties Code and subsection 10-4-2(d) of the Municipal Code, the General Assembly has determined that counties and municipalities must expand their health insurance coverage to include mammogram screenings for specified employees. Moreover, sections 5-1069.1 of the Counties Code and 10-4-2.1 of the Municipal Code require counties and municipalities that do not provide insurance coverage of mammograms to establish their own mammogram screening programs, thus, requiring the indicated units of government to expand their health and medical care benefits.

Based upon the foregoing, it appears that the General Assembly has enacted legislation which requires counties and municipalities to expand their employees' fringe benefits. Specifically, the statutes direct counties and municipalities to expand their insurance, health and medical care benefits. Consequently, it is my opinion that sections 5-1069(d) and 5-1069.1 of the Counties Code and sections 10-4-2 and 10-4-2.1 of the Illinois Municipal Code create personnel mandates as that

Honorable Barbara Flynn Currie - 9.

term is used in the State Mandates Act. As such, the mandates are subject to reimbursement by the State under subsection 6(d) of the Act.

Section 8 of the State Mandates Act provides, in pertinent part:

" * * *

The failure of the General Assembly to make necessary appropriations shall relieve the local government of the obligation to implement any service mandates, tax exemption mandates, and personnel mandates, as specified in Section 6 subsections (b), (c), (d) and (e), unless the exclusion provided for in this Section are explicitly stated in the Act establishing the mandate. In the event that funding is not provided for a State-mandated program by the General Assembly, the local government may implement or continue the program upon approval of its governing body. If the local government approves the program and funding is subsequently provided, the State shall reimburse the local governments only for costs incurred subsequent to the funding.

* * *

"

(Emphasis added.)

The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Tucker (1995), 167 Ill. 2d 431, 435.) Legislative intent is best evidenced by the language used the statute. (Bubb v. Springfield School Dist. 186 (1995), 167 Ill. 2d 372, 381.) Where the language of a statute is clear and unambiguous, it must be given effect as written. Branson v. Department of Revenue (1995), 168 Ill. 2d 247, 254.

Honorable Barbara Flynn Currie - 10.

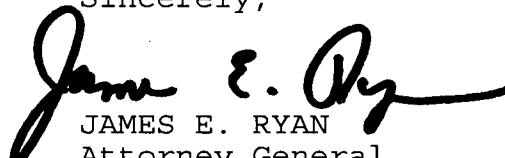
Under the provisions of section 8 quoted above, the courts have concluded that the General Assembly intended to release local governments from the obligation to implement certain types of programs or expenditures without a concomitant appropriation from the State to cover the increased costs caused by laws creating or expanding those programs or expenditures. (Board of Education of Maine Township High School District 207 v. State Board of Education (1985), 139 Ill. App. 3d 460, 462-65.) Moreover, the plain language of section 8 indicates that personnel mandates as specified in subsection 6(d) of the Act are among those obligations which the General Assembly has expressly determined are unenforceable in the absence of an appropriation for reimbursement. There is nothing which prevents a self-insured county or municipality from electing to provide mammogram screening for its female employees. Because subsection 5-1069(d) and section 5-1069.1 of the Counties Code and sections 10-4-2 and 10-4-2.1 of the Municipal Code create personnel mandates which require reimbursement, it is my opinion that self-insured counties and municipalities, including home rule units, are relieved of the obligation to provide mammogram screening for female employees over 35 years of age in the absence of a State appropriation of funds for reimbursement.

I further note that in 1994, the General Assembly passed Senate Bill 1486, which would have added section 8.18 to the State Mandates Act to provide an exemption from the

Honorable Barbara Flynn Currie - 11.

reimbursement requirements for any mandate created by Public Act 87-780. That Bill, however, was vetoed by the Governor, who stated that it is irresponsible of the State to mandate new programs for local governments when the General Assembly does not appropriate funds for such mandates. (See 1994 Journal of the Illinois Senate, 87th General Assembly 6667-69.) It is, of course, presumed that an amendment to a statute is intended to change the law as it then exists. (Board of Trustees v. Department of Human Rights (1994), 159 Ill. 2d 206, 213; People v. Krause (1995), 273 Ill. App. 3d 59, 62.) If the State Mandates Act, prior to the passage of Senate Bill 1486, had included a requirement for counties and municipalities to undertake mammogram screening without a corresponding appropriation by the General Assembly, then the amendment proposed by that Bill would have been unnecessary and superfluous.

Sincerely,


JAMES E. RYAN
Attorney General