



OFFICE OF THE ATTORNEY GENERAL
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Jim Ryan
ATTORNEY GENERAL

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UNIVERSITIES AND COLLEGES:
Termination of State Community College

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Illinois Community College Board
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Dear Ms. Evans:

I have your letter wherein you pose several questions relating to the forthcoming abolition of the State Community College of East St. Louis on July 1, 1996, under section 4-1 of the Public Community College Act (110 ILCS 805/4-1 (West 1994)), and the establishment of a self-governing community college within the same territory on that date. Specifically, you have asked the following questions:

- 1) Will the existing experimental district be completely abolished pursuant to the establishment of the new community college district, or will there merely be a new governing body of the existing district? If the existing district is abolished, then the following additional questions also require determination.

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- 2) How may the transfer of real property and equipment from the existing district to the new district be effected?
- 3) What entity will be responsible for the payment of accumulated, but unpaid, sick leave and vacation benefits of employees of the experimental district?
- 4) What entity will be responsible for the payment of outstanding claims against the experimental district, and the performance of continuing contracts and other agreements?
- 5) What effect will the reorganization have upon the employment status of current employees of the experimental district, including faculty tenure and collective bargaining agreements?
- 6) Will the abolition of the experimental district affect the rights of persons who retire after June 30, 1996, with respect to health insurance coverage?
- 7) What effect will the abolition of the experimental district have upon lapse period expenditures? How should balances in current funds be disposed of after June 30, 1996?

For the reasons hereinafter stated, it is my opinion that the existing experimental district will be completely abolished, and a new district formed, on the effective date set forth in section 4.1 of the Public Community College Act; the existing entity will not continue in a different form. Your other questions are readily answered in view of that conclusion.

Section 2-12.1 of the Public Community College Act (110 ILCS 805/2-12.1 (West 1994)), added by Public Act 76-724, effective August 8, 1969, required the Illinois Community College Board (hereinafter referred to as "ICCB") to establish an experimental community college in the East St. Louis area. The State

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Community College of East St. Louis was duly established and has since operated under the general governance of a board of trustees appointed by the Governor (110 ILCS 805/4-1, 4-2 (West 1994)), subject to oversight by the ICCB (110 ILCS 805/4-7 (West 1994)). Because it is an entity created by statute, which is funded by appropriations from the General Revenue Fund (110 ILCS 805/4-6.1 (West 1994)), the officers of which are appointed by the Governor, and is subject to the direct review and control of the ICCB, the State Community College of East St. Louis is an agency of the State. See, e.g., Guse v. Board of Trustees of Public School Teachers' Pension and Retirement Fund (1990), 203 Ill. App. 3d 111, 115-19.

Sections 2-12.1 and 4-1 of the Public Community College Act were amended by Public Act 86-722, effective September 1, 1989, to provide for a referendum to be held at the November, 1994, general election within the territory served by the State Community College of East St. Louis on the establishment of a community college district to replace the experimental district, and to authorize the levy of a tax to support the new district. The referendum proposition was adopted. Subsection 2-12.1(c) of the Act (110 ILCS 805/2-12.1(c) (West 1994)) provides:

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* * *

(c) If a majority of the votes cast on the proposition at the election provided for in subsection (b) is in favor of the proposition:

(1) The establishment of the new community college district shall become effective on July 1, 1996, notwithstanding any minimum population, equalized assessed valuation or other requirements provided by Section 3-1 or any other provision of this Act for the establishment of a community college district.

(2) The experimental district established pursuant to subsection (a) shall be abolished effective upon establishment of the new community college district on July 1, 1996.

(3) The territory of the new community college district shall be comprised of the territory of, and its boundaries shall be coterminous with the boundaries of the experimental district which it replaces.

(4) Notwithstanding the fact that the establishment of the new community college district does not become effective until July 1, 1996, the election for the members of the initial board of the new community college district, to consist of 7 members, shall be held at the nonpartisan election in November of 1995 in the manner provided by the general election law, nominating petitions for members of the initial board shall be filed with the regional superintendent in the manner provided by Section 3-7.10 with respect to newly organized districts, and the persons entitled to nominate and to vote at the election for the members of the board of the new community college district shall be the electors in the territory referred to in paragraph (3) of this subsection.

(5) Each member elected to the initial board of the new community college district must, on the date of his election, be a citizen of the United States, of the age of 18 years or over, and a resident of the State and the territory referred to in paragraph (3) of this subsection for at least one year preceding his election. Election to the initial board of the new community college district of a person who on July 1, 1996 is a

member of a common school board constitutes his resignation from, and creates a vacancy on that common school board effective July 1, 1996.

(6) Each of the members first elected to the board of the new community college district shall take office on July 1, 1996, and the Illinois Community College Board, publicly by lot and not later than July 1, 1996, shall determine the length of term to be served by each member of the initial board as follows: 2 shall serve until their successors are elected at the nonpartisan election in 1997 and have qualified, 2 shall serve until their successors are elected at the nonpartisan election in 1999 and have qualified, and 3 shall serve until their successors are elected at the nonpartisan election in 2001 and have qualified. Their successors shall serve 6 year terms.

(7) The regional superintendent shall convene the initial board of the new community college district on July 1, 1996, and the non-voting student member initially selected to that board as provided in Section 3-7.24 shall serve a term beginning on the date of selection and expiring on the next succeeding April 15. Upon being convened, the board shall proceed to organize in accordance with Section 3-8, and shall thereafter continue to exercise the powers and duties of a board in the manner provided by law for all boards of community college districts except where obviously inapplicable or otherwise provided by this Act. Vacancies shall be filled, and members shall serve without compensation subject to reimbursement for reasonable expenses incurred in connection with their service as members, as provided in Section 3-7. The duly elected and organized board of the new community college district shall levy taxes at a rate not to exceed .175 percent for educational purposes and at a rate not to exceed .05 percent for operations and maintenance of facilities purposes; provided that the board may act to increase such rates at a

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regular election in accordance with Section 3-14 and the general election law.

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Section 4-1 of the Act provides that the terms of office of the trustees of the experimental district end upon the abolition of the experimental district on July 1, 1996. No other legislative provision has been made regarding the transition of property, assets, liabilities or employees from the experimental district to the new district, which will be a body politic and corporate rather than an agency of the State. (110 ILCS 805/3-11 (West 1994).)

Section 3-13 of the Act (110 ILCS 805/3-13 (West 1994)), which provides for the organization of a new district within the territory of an existing community college, does not appear to be applicable to the present situation. Section 3-13 requires the existing board of trustees to continue operating, including for purposes of levying taxes, until the new board is ready to begin operations. The State Community College of East St. Louis, however, will be abolished as of July 1, 1996, and the terms of its trustees will be ended. The assets, receivables, and liabilities of the State entity clearly belong to the State, not to a local community college. Consequently, the transfer provision in section 3-13 does not appear to apply to State property.

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Based upon sections 2-12.1 and 4-1 of the Act, it is my opinion that on July 1, 1996, the entity known as the State Community College of East St. Louis will cease to exist. A new body politic and corporate, in the form of a community college district, will come into being. This is not a mere change in form of government of the continuing entity, but an entirely new entity which has no evident right to succeed to the assets of the current State entity.

With respect to your second question, absent further legislation, the transfer of property no longer needed by the State is governed by the State Property Control Act (30 ILCS 605/1 et seq. (West 1994)). Although sections 7 through 8 of that Act (30 ILCS 605/7 through 605/8 (West 1994)) provide for the transfer of property to, among others, colleges, the Act does not permit the transfer of property without compensation to the State at an appraised value. If it is intended that property be transferred at a nominal cost or at no cost to the new district, legislation authorizing such a transfer will be required.

In response to your third question, upon the abolition of the State Community College of East St. Louis on July 1, 1996, the employment of the current employees will terminate. It is my understanding that the current board of trustees has already informed its employees of this. As terminated employees, these individuals will have all rights provided by statute or collective bargaining agreements to compensation for unused sick or

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vacation leave. Payment of these benefits will be the responsibility of the State. Clearly, the new district, which is not yet in existence, can have no responsibility for these amounts.

With respect to your fourth question, as discussed above, the State Community College of East St. Louis is an agency of the State. Claims against it and its board of trustees are cognizable only in the Court of Claims (110 ILCS 805/4-8 (West 1994)). Employees and officers of the experimental district are entitled to be defended and indemnified pursuant to the State Employee Indemnification Act (5 ILCS 350/0.01 et seq. (West 1994)). These provisions will apply with respect to any claim arising prior to the abolition of the experimental district.

It is less clear what agency may pay undisputed claims falling due after July 1, 1996, and arrange for performance of any contracts not terminating by that date. Because the ICCB was responsible for establishing the experimental district (110 ILCS 805/12.1 (West 1994)), and continues to have financial oversight responsibilities with respect thereto, it is reasonable to conclude, absent more specific direction, that the General Assembly intends that the ICCB make any necessary arrangements to wind up the affairs of the district, at least to the extent that such matters cannot be concluded by the board of trustees prior to its abolition. The winding up of affairs may, in my opinion, include contracting with the new community college district for performance of uncompleted contracts.

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With respect to your fifth question, current employees will necessarily be terminated as employees of the experimental district when that body ceases to exist. It is possible that they may be hired immediately by the new district, but that will be a different employer entirely. Current collective bargaining agreements end on June 30, 1996. The new district will not come into existence until July 1, 1996. Consequently, current representatives will have to seek recognition as representatives of the employees of the new district, and bargain collectively with that entity once it comes into existence. See, Matter of State Community College Federation of Teachers, Local 3912, AFT/IFT, AFL-CIO, Case No. 96-RC-0009-S, Ed. Lab. Rel. Bd. (Feb. 20, 1996, Acting Executive Director's Recommended Decision and Order).

With respect to tenure, section 3B-2 of the Public Community College Act (110 ILCS 805/3B-2 (West 1994)), provides that tenured faculty members may be terminated upon:

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b. A reduction in the number of faculty members employed by the board or a discontinuance of some particular type of teaching service or program."

In this context, the State Community College of East St. Louis, the current employer, will terminate all of its programs on July 1, 1996. All faculty, including tenured faculty, will presumably be dismissed at that time. Absent further legislation

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otherwise providing, there is no provision for tenure to carry over to the new district, which will be a new employer.

In response to your sixth question, I note that both employees of the State Community College of East St. Louis and of local community college districts are participants in the State Universities Retirement System (SURS). (40 ILCS 5/15-106 (West 1994).) Therefore, for purposes of retirement and any other benefits controlled by SURS, those benefits should be unaffected. Health insurance benefits, however, are not a part of the benefits provided by SURS. While SURS can withhold premiums from annuity payments (40 ILCS 5/15-185 (West 1994)), the insurance plan itself must be one sponsored by an employer. Community college boards are authorized to provide for insurance for employees and their dependents. (110 ILCS 805/3-31 (West 1994).) Assuming that any plan selected by the new district board permits the participation of retirees, it is that plan which will determine the insurance benefits of employees who retire after they begin their employment with the new district. After July 1, 1996, such employees will no longer qualify for health insurance as State employees, unless they are employed by some other State agency.

Lastly, you inquire regarding the effect the coming change will have on lapse period expenditures, bills not paid by the end of the lapse period and remaining fund balances. As discussed above, liabilities incurred by the State agency will

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remain State liabilities, and, based upon the relationship between the ICCB and the experimental district, the ICCB may wind up the affairs of the experimental district. In my opinion, this should include lapse period expenditures for bills incurred prior to July 1, 1996. Bills which are not paid by the end of the lapse period must be processed through the Court of Claims, as are other claims for which spending authority expires. (705 ILCS 505/8, 24 (West 1994).)

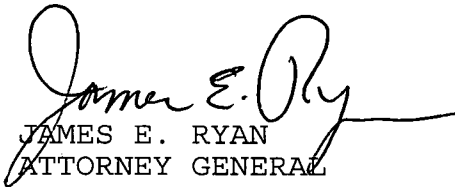
At this time, there is no authority for the disposition of balances left in State Community College funds. Section 4-6.1 of the Public Community College Act creates certain funds and provides for income to and expenditures from those funds. It makes no provision for any other disposition of the funds. It is fundamental that State funds may be expended only for the purposes for which they are appropriated by the General Assembly. (Ill. Const. 1970, art. VIII, sec. 2(b).) Therefore, unless and until the General Assembly appropriates the funds remaining in an account designated for a State agency which has been abolished, those funds cannot be expended.

As I have indicated, many of the issues you have raised would best be addressed legislatively. Therefore, I strongly recommend that these matters be considered by the General Assembly as soon as possible for the purpose of fashioning a compre-

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hensive mechanism for the transition of operations from the
experimental district to the public community college district.

Sincerely,



JAMES E. RYAN
ATTORNEY GENERAL