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ATTORNEY GENERAL
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SPRINGFIELD

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FILE NO. 80-028

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
School Board Purchases
Mandated by Federal Law

Honorable Theodore J. Floro
State's Attorney
McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Floro:

I have your letter wherein you ask whether one of the school board members of Crystal Lake High School District No. 155 has sufficient interest in a certain contract to place him in violation of section 3 of "AN ACT to prevent fraudulent and corrupt practices, etc." [Corrupt Practices Act] (Ill. Rev. Stat. 1979, ch. 102, par. 3). I am of the opinion that, under the particular circumstances which you have described, the board member in question would not be in violation of the Act.

You advise that the school board member is employed by Standard Oil of Indiana and is in charge of fuel allocations for an area including Crystal Lake. He has no duties concerning pricing, nor does he control the amount of fuel allocated to any particular user. He merely makes sure that the governmental guidlines are followed. He owns some stock in Standard Oil of Indiana, but less than 7 1/2%.

You have enclosed a copy of a joint transportation agreement which has been entered into by School Districts No. 155 and No. 47, Crystal Lake, Illinois. Under the Federal government's fuel allocation program, AMOCO, a subsidiary of Standard Oil of Indiana, has been designated as the supplier of fuel, for the present school year, to the association formed by the school districts under the agreement. The share of the budget for School District No. 155, under the agreement for this year, is in excess of $25,000.

According to the information in your letter, the governing board of the association formed by the agreement intends to advertise for bidders. If there are no bidders or should no one be able to guarantee an adequate supply, the association would be required to purchase gasoline from AMOCO, the designated supplier under the Federal government's petroleum allocation program. It is my understanding that the daily operations of the association of school districts, including the acceptance or rejection of bids, is subject to the approval and vote of each school board.

Both section 3 of the Corrupt Practices Act, and section 10-9 of The School Code (Ill. Rev. Stat. 1979, ch. 122, par. 10-9) prohibit a school board member from being interested in any contract, work or business of the school district. Section 3 of the Corrupt Practices Act (Ill. Rev. Stat. 1979, ch. 102, par. 3), provides in pertinent part:

> "(a) No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void.
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Subsections (b) and (c) of both section 3 and section 10-9 contain certain exceptions. The contract with AMOCO, however, could not be excepted under these subsections since the share of the budget for School District No. 155 under the agreement for the year is in excess of $25,000. Subsection (d) of these statutes exempts contracts for the procurement of public utility services in certain instances. It provides as follows:

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> (d) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an

> ownership interest of no more than 7 1/2% in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section."

The Federal program came into existence as the result of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. § 751 et seq.) and implementing Federal regulations. Section 211.9 of the regulations which implement this Act (10 C.F.R. § 211.9 (1980)), provides in pertinent part as follows:

> "(a) Supplier/wholesale purchaser relationship. (1) Each supplier of an allocated product shall supply all wholesale purchaser-resellers and all wholesale purchaser-consumers which purchased or obtained that allocated product from that supplier during the base period as specified in Subparts D through K of this part.
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> (ii) Unless otherwise provided in this part or directed by FEA, the supplier/wholesale purchaser-consumer relationships defined by specific dates or base periods or otherwise imposed pursuant to this part shall be maintained for the duration of the Mandatory Petroleum Allocation Program and may not be revised or otherwise terminated except that any such relationship may be terminated by the mutual consent of both parties.
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> * * * "

Section 211.51 of the regulations (10 C.F.R. § 211.51(1980))

provides in part as follows:

" * * *

> 'Wholesale purchaser-consumer' means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either * * *
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> (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.
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> * * *

"

It is my understanding that the association formed by the school districts purchased more than 84,000 gallons of gasoline in a completed year subsequent to 1971 and therefore that it was a wholesale purchaser-consumer under the above definition. You further advise that AMOCO supplied gasoline for a portion of the time of the base period and therefore, because of the aforesaid Federal regulations, AMOCO may be required to furnish part of the gasoline supply of the association. It is my further understanding that the school board member about whom you inquired, was not a board member when the original contract with AMOCO was entered into, nor was he a member of the board during the base period.

Because of the aforementioned Federal regulations, the school board might not have any discretion as to whether to do business with AMOCO. Under such circumstances, I am of the opinion that the school board member in question would

not be in violation of section 3 of the Corrupt Practices Act or section 10-9 of The School Code.

Although AMOCO is not generally considered a public utility, in this particular situation it may be treated as one. It is a general rule of statutory construction as stated in Petterson v. City of Naperville (1956), 9 Ill. 2d 233, 245, that:

> "In ascertaining legislative intent, the courts should consider the reason or necessity for the enactment and the meaning of the words, enlarged or restricted, according to their real intent. Likewise the court will always have regard to existing circumstances, contemporaneous conditions, and the object sought to be obtained by the statute. People ex rel. Holvey v. Kapp, 355 Ill. 596; Chicago Packing and Provision Co. v. City of Chicago, 88 Ill. 221."

AMOCO is required by the Federal government under certain circumstances to supply fuel to the school districts. One of the characteristics of a public utility is that it is not free to determine independently whom it will serve, but must serve all indiscriminately. Certainly the General Assembly, in amending the Corrupt Practices Act by adding the exception for public utilities thus allowing persons who had an interest in public utilities to serve on public bodies, recognized that these persons had no control over the choice of the provider of services and no control over rates. Thus, they could exercise no influence over the contracts with these public utilities. This reasoning equally applies to AMOCO in this situation.

Furthermore, in Capital Gas Co. v. Young (Cal. S.Ct. 1895) 41 P. 869, a claim of the gas company for gas supplied to the city of Sacramento was sustained although the mayor of the city was also a stockholder in the company at the time the contract was awarded and when the claims were presented for payment. The court said at page 871:

> " * * * Under the operation of this law, the gas company was not a free agent with power to contract or refuse to do so, but it became its duty upon demand to furnish gas to the city, irrespective of the status of its president. This duty to furnish gas to the city devolved upon the respondent, not by virtue of any contract, but by operation of law; and hence the laws governing ordinary contracts resting in the volition of the parties thereto has no application. * * * "

In conclusion, I am of the opinion that the school board member about whom you inquired, would not be in violation of either section 3 of the Corrupt Practices Act or section 10-9 of The School Code, if the association formed by the school districts were required by Federal law to purchase gasoline from AMOCO.

Very truly yours,

ATTORNEY GENERAL