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SPRINGFIELD

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FILE NO. 87-001

SCHOOLS AND SCHOOL DISTRICTS:
Special Education Joint
Agreement Cooperatives

Honorable Patrick D. Welch
Illinois State Senator
105C Capitol
Springfield, Illinois 62706

Dear Senator Welch:

I have your letter wherein you pose several questions relating to the organization and operation of special education joint cooperatives created under section 10-22.31 of The School Code (Ill. Rev. Stat. 1985, ch. 122, par. 10-22.31, as amended by Public Act 84-1308, effective August 25, 1986), which, in pertinent part, empowers school boards:

> "* * * To enter into joint agreements with other school boards to provide the needed special educational facilities and to employ a director and other professional workers as defined in Section 14-1.10 and to establish facilities as

defined in Section 14-1.08 for the types of children described in Sections 14-1.02 through 14-1.07. The director and other professional workers may be employed by one district which shall be reimbursed on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. Such agreement shall provide that any full-time school psychologist who is employed by a joint agreement program and spends over 50% of his or her time in one school district shall not be required to work a different teaching schedule than the other school psychologists in that district. Such agreement shall be executed on forms provided by the State Board of Education and shall include, but not be limited to, provisions for administration, staff, programs, financing, housing, transportation and advisory body and provide for the withdrawal of districts from the joint agreement by petition to the regional board of school trustees.

* * *

To either (1) designate an administrative district to act as fiscal and legal agent for the districts that are parties to the joint agreement, or (2) designate a governing board composed of one member of the school board of each cooperating district and designated by such boards to act in accordance with the joint agreement. No such governing board may levy taxes and no such governing board may incur any indebtedness except within an annual budget for the joint agreement approved by the governing board and by the boards of at least a majority of the cooperating school districts or a number of districts greater than a majority if required by the joint agreement. If more than 17 school districts are parties to the joint agreement the governing board may appoint an executive board of at least 7 school board members from among the members serving on the governing board, to administer the joint agreement, in accordance with its terms.

* * * "

Your first question concerns whether a joint agreement under section 10-22.31 may provide for a special education cooperative to be governed by a board composed solely of school superintendents or other school administrators representing the several cooperating school districts, where that board is authorized by the agreement to establish salaries, hire and discharge personnel, adopt a budget, set policy and otherwise act as the legal and fiscal agent for the joint agreement cooperative.

Under section 10-22.31 of The School Code, cooperating school districts may select one of two forms of governance for a special education cooperative: either designation of one participating school district to serve as the administrator of the agreement or, in the alternative, formation of a governing board consisting of one school board member representing each of the cooperating districts. It is well established that school districts possess no inherent powers, but rather, may exercise only those powers granted by the constitution or by statute. (Ill. Const. 1970, art. VII, § 8; see People ex rel. Smith v. Wabash Rwy. Co. (1940), 374 Ill. 165, 172; Beaver Glass & Mirror Co. v. Bd. of Education of Rockford School District No. 205 (1978), 59 Ill. App. 3d 880, 883.) Further, section 10-22.31, in authorizing two alternative forms of governance for joint agreement cooperatives, implicitly

excludes the utilization of any other form of governance. (See Blakeslee's Warehouses v. City of Chicago (1938), 369 Ill. 480, 483; Wood v. Stewart (1905), 120 Ill. App. 34, 36.) A governing board composed of school superintendents or other administrators is not a permissible form of governance under section 10-22.31 of The School Code. Therefore, it is my opinion that the designation of such a board to administer a joint agreement cooperative exceeds the powers of the cooperating school districts, and hence, is ultra vires.

Your second and third questions are closely related to your first. You inquire whether, in a circumstance in which the parties to a joint agreement have designated an administrative district to administer the agreement, it is permissible also to create a board of directors, consisting of the superintendent of each cooperating district, and to empower that board to take final action on a variety of administrative matters, including the adoption of a budget, the employment of personnel and the approval of contracts. Clearly, this is the establishment of a form of governance not authorized by section 10-22.31 of The School Code, in which the administrative district, although designated, is not responsible for the administration of the agreement, but is utilized only for the convenience of the actual administrator, the board of directors. For the reasons stated in response to your first

question, it is my opinion that the adoption of this form of governance for a joint agreement cooperative would be ultra vires.

You have also inquired whether it would be permissible for the parties to a joint agreement to designate an administrative district to act as agent for the agreement, and also to create an advisory board consisting of one school board member representing each participating school district, which would make recommendations on policies and administrative acts to the governing board of the designated administrative district for its consideration or final action. This system differs materially from those to which your first two questions pertain, since the board in this case would have only advisory functions, while the actual administration of the joint agreement would be the responsibility of the governing board of the designated administrative district. Section 10-22.31 of The School Code implicitly requires the creation of such an advisory body for a joint agreement by providing that the agreement itself must make provision for an "advisory body". Consequently, it is my opinion that the creation of a board representing each participating district in a joint agreement to advise the designated administrative district for the agreement on policies and administrative functions is valid.

As a final note to your first and second questions, I am aware that special education cooperatives with forms of

governance similar to those discussed therein were involved in the circumstances underlying Seim v. Board of Education of Community District No. 87 (1974), 21 Ill. App. 3d 386 and Evans v. Board of Education of Murphysboro Community Unit School District (1980), 85 Ill. App. 3d 436. In neither of those cases, however, was the validity of the form of governance adopted by the cooperatives in question an issue. Consequently, I do not believe that these cases have any bearing upon the resolution of your questions, or that the silence of the courts in these cases can be construed as judicial approval.

Your fourth question concerns whether the governing boards or advisory boards of special education joint agreement cooperatives formed under section 10-22.31 of The School Code are subject to the provisions of the Open Meetings Act (Ill. Rev. Stat. 1985, ch. 102, par. 41 et seq.) The Open Meetings Act requires, with only limited exceptions, that all public bodies of the State conduct their business at meetings open to the public after requisite notice. (Ill. Rev. Stat. 1985, ch. 102, pars. 41, 42, 42.02.) The definition of "public body" in the Act (Ill. Rev. Stat. 1985, ch. 102, par. 41.02) is very broad, and includes within its purview all legislative, executive and advisory bodies of all boards, bureaus, committees and commissions in the State. It is my opinion that both the governing board of a joint agreement cooperative and

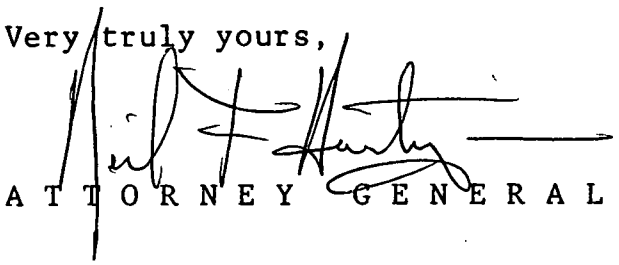
any advisory board created to advise a governing board or an administrative district, are public bodies subject to the Act which must, therefore, comply with its provisions.

Moreover, it is my opinion that, even if a governing board has been invalidly created, such as those to which your first two questions pertain, that board must comply with the provisions of the Open Meetings Act. The applicability of that Act is not determined by the legitimacy of the formation of the public body; if such a board undertakes to govern the agreement, it does so in a de facto capacity and is subject to all limitations to which a de jure board would be subject.

Your final question concerns whether a special education cooperative may develop and operate an off-campus, "alternative regular education" program for non-special education students, including disruptive students who may otherwise be expelled for disciplinary reasons. Section 10-22.31 authorizes the formation of joint agreement cooperatives to provide special education facilities and services to children entitled thereto, i.e., handicapped children and children with learning disabilities. (Ill. Rev. Stat. 1985, ch. 122, pars. 14-1.02, 14-1.03a.) The operation of an alternative education program for children who are neither handicapped nor suffer from learning disabilities is outside the scope of the statutory powers of a special

education cooperative. Therefore, it is my opinion that a special education cooperative may not operate a program such as that which you have described. I note, however, that school districts may be able to establish a separate joint agreement cooperative under section 10-22.31a of The School Code (Ill. Rev. Stat. 1985, ch. 122, par. 10-22.31a) to undertake joint educational programs not related to special education needs.

Very truly yours,



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