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FILE NO. S-1238

HOME RULE:

Power of City of Chicago
to License and Regulate
Methadone Maintenance Clinics.

LeRoy P. Levitt, M.D.
Chairman
Dangerous Drugs Commission
300 North State Street
Chicago, Illinois 60610

Dear Dr. Levitt:

This responds to your letter in which you ask whether the city of Chicago may license and regulate methadone maintenance clinics. You state that the Chicago Health Department has attempted to regulate these clinics pursuant to chapter 118 of the Chicago Municipal Code which requires clinics that dispense drugs to obtain a license from the city of Chicago. It is my opinion that the city of Chicago

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has no authority to license and regulate methadone maintenance clinics because the General Assembly has specifically provided that the power to license and regulate clinics for the treatment of controlled substance addicts is an exclusive State power.

As a home rule unit of government, the city of Chicago has the power to license and regulate for the protection of the public health. (Ill. Const. of 1970, art. VII, sec. 6(a).) However, the General Assembly has the authority under the Constitution to prevent home rule units from exercising a home rule power. If the General Assembly specifically provides that a power shall be exclusively exercised by the State, home rule units may not exercise the power. In the absence of a specific provision, the power may be exercised concurrently by the State and home rule units. Sections 6(h) and 6(i) of article VII of the Illinois Constitution of 1970 read as follows:

"(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

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(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive."

In section 28 of the Dangerous Drug Abuse Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 120.28) the General Assembly has provided specifically that the powers expressly delegated to the Dangerous Drugs Commission in the Act are exclusive State powers. Section 28 provides as follows:

"It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that the powers and functions set forth in this Act and expressly delegated to the Dangerous Drugs Commission are exclusive state powers and functions. Nothing herein prohibits the exercise of any power or the performance of any function, including the power to regulate for the protection of the public health, safety, morals and welfare, by any unit of local government, including a home rule unit, other than the powers and functions set forth in this Act and expressly delegated to the Dangerous Drugs Commission to be exclusive state powers and functions."

Among powers expressly delegated to the Commission in the Dangerous Drug Abuse Act is the power to license facilities for the treatment of drug addicts. Section 14 of the Act

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(Ill. Rev. Stat. 1975, ch. 91 1/2, par. 120.14) provides in pertinent part:

"(a) No person shall establish, open, conduct, operate or maintain a facility or provide services for the treatment, care, rehabilitation, training or education of addicts and abusers of dangerous drugs without first obtaining a license from the Commission.

* * *

Section 13 of the Act (Ill. Rev. Stat. 1976 Supp., ch. 91 1/2, par. 120.13) authorizes the Commission to promulgate regulations regarding licensees. Section 13 reads in pertinent part:

"(a) The Commission shall enforce the provisions of this Act and shall have authority to formulate, make, adopt and promulgate such minimum requirements, qualifications, rules and regulations, including denial, suspension, or revocation of licenses, for the interpretation and efficient enforcement of this Act as may be necessary.

* * *

The specific provision in section 28 prevents home rule units from licensing or regulating facilities such as methadone maintenance clinics. Because the Dangerous Drugs Commission's power to license and regulate methadone clinics is specifically declared to be an exclusive State power, home

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rule units have no authority to license or regulate methadone clinics concurrently with the State. Therefore, the city of Chicago may not license or regulate methadone maintenance clinics.

This conclusion is supported by the decision in United Private Detective and Security Association, Inc. v. City of Chicago (1976), 62 Ill. 2d 506, where the court held that a statute providing that the power to regulate the private detective business was to be exercised exclusively by the State prevented the city of Chicago from licensing and regulating private detectives. The court illustrated the fact that a declaration of exclusivity under section 6(h) unconditionally bars a home rule unit's exercise of the affected power by quoting the following example from the Majority Report of the Convention Committee on Local Government:

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* * *

5. Home-Rule City adopts an ordinance requiring door-to-door salesmen to obtain a city license (conditioned upon the meeting of certain qualifications and the payment of a reasonable fee) before engaging in their trade with the city. The ordinance is valid under the home-rule powers granted in paragraph 3.1(a) [section 6(a)]. The General

Assembly could forbid municipal licensing of door-to-door salesmen by a three-fifths vote of the membership of each house elected and serving, pursuant to paragraph 3.2(a) [section 6(g)]. Under paragraph 3.2(b) [section 6(h)], the General Assembly could instead provide for a state wide system of licensing, effected either through a state agency or through municipalities and other local governments acting as agents of the state. This state-wide system would, if declared exclusive by the General Assembly, preclude additional local licensing under paragraph 3.2(b) [section 6(h)].

* * *

(7 Record of Proceedings, Sixth Illinois Constitutional Convention, 1652-1653.)

As indicated in the above example the General Assembly may establish a State wide system of licensing that is effected through municipalities. In the Dangerous Drug Abuse Act the legislature has provided that the State wide system of licensing facilities for the treatment of drug addicts may be effected through municipal boards of health. The Dangerous Drugs Commission may request municipal boards of health to assist in investigating treatment facilities which apply for or already hold State licenses. Section 14 of the Dangerous Drug Abuse Act reads in pertinent part:

" * * *

The Commission or its designated agents, either before or after the issuance of a license, may request and shall receive the

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cooperation of the Illinois Department of Law Enforcement, county and multiple county health departments or municipal boards of health to make investigations to determine if the applicant or licensee is complying with the minimum standards prescribed by the Commission. The report and recommendations of any such agency shall be in writing and shall state with particularity its findings with respect to compliance or non-compliance with such minimum standards, rules, and regulations.

* * *

(Emphasis added.)

Thus, even though the city of Chicago does not have the authority to license or regulate methadone maintenance clinics, the Chicago Board of Health, when requested, is required to cooperate with the Dangerous Drugs Commission in investigating these facilities.

Very truly yours,

A T T O R N E Y G E N E R A L