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SPRINGFIELD

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FILE NO. 84-007

CRIMINAL LAW AND PROCEDURE:
Power of the Department of Law
Enforcement to Audit Criminal
History Information Submitted by
Local Law Enforcement Agencies

James B. Zagel, Director
Illinois Department of Law Enforcement
103 Armory
Springfield, Illinois 62706

Dear Mr. Zagel:

I have your letter wherein you inquire whether the Department of Law Enforcement has the authority to conduct periodic audits of information requested from local law enforcement agencies pursuant to the provisions of "AN ACT in relation to criminal identification and investigation" (Ill. Rev. Stat. 1981, ch. 38, par. 206-1 et seq.), where such audits would necessitate the acquisition by the Department of police

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reports and other material from the originating agencies. For the reasons hereinafter stated, it is my opinion that the Department is authorized to conduct the audits in question, and, in the conduct of such audits, to request and receive necessary police reports or other material from local law enforcement agencies.

Section 55a of The Civil Administrative Code of Illinois (Ill. Rev. Stat. 1982 Supp., ch. 127, par. 55a) provides in pertinent part:

"The Department of Law Enforcement shall have the following powers and duties * * *:

* * *

3. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by 'An Act in relation to criminal identification and investigation,' approved July 2, 1931;

* * *

5. To (a) be a central repository and custodian of criminal statistics for the State, (b) procure and file for record photographs, plates, outline pictures, measurements, descriptions of all persons who have been arrested on a charge of violation of a penal statute of this State, (c) procure and file for record such information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, (d) procure and file for record such copies of fingerprints, as may be required by law, of all persons arrested on charges of violating any penal statute of the State * * *.

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In addition, section 8 of "AN ACT in relation to criminal identification and investigation" (Ill. Rev. Stat. 1981, ch. 38, par. 206-8) provides as follows:

"The Department shall be a central repository and custodian of crime statistics for the State and it shall have all power incident thereto to carry out the purposes of this Act, including the power to demand and receive cooperation in the submission of crime statistics from all units of government."

You advise in your letter that you propose to audit a statistically random sample of information requested pursuant to section 8 of the Act by comparison with police reports in order to determine if the offenses reported were properly classified. You ask whether the Department may require that local law enforcement agencies supply police reports or other material for comparison with the information submitted to the Department pursuant thereto.

It is well established that administrative agencies, such as the Department of Law Enforcement, possess only such authority as is legally conferred by express provisions of law or such as, by fair implication and intendment, is incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objective for which the agencies were created. (Lenard v. Board of Education of Fairfield (1978), 57 Ill. App. 3d 853, 863, appeal after

remand 74 Ill. 2d 260 (1979); Parliament Insurance Co. v. Department of Revenue (1977), 50 Ill. App. 3d 341, 347.) Thus, it has been stated that an express grant of power to an administrative agency includes the authority to do all that is reasonably necessary to execute the power or perform the duty specifically conferred. (Meana v. Morrison (1975), 28 Ill. App. 3d 849, 854; Staley Manufacturing v. Environmental Protection Agency (1972), 8 Ill. App. 3d 1018, 1023.) In determining the scope of the grant of authority to an administrative agency, the purpose of the underlying legislation must be considered. (Eastman Kodak v. Fair Employment Practices Commission (1980), 83 Ill. App. 3d 215, 217-18, aff'd, 86 Ill. 2d 60 (1981).) When ascertaining the purpose of a statutory enactment, it is assumed that the General Assembly intended to enact an effective law; thus, an interpretation which would render it ineffective or inoperative should, if possible, be avoided. Pliakos v. Liquor Control Commission (1957), 11 Ill. 2d 456, 459-60; see Moran v. Katsinas (1959), 16 Ill. 2d 169, 175.

Both section 8 of "AN ACT in relation to criminal identification and investigation" and section 55a of The Civil Administrative Code of Illinois provide that the Department of Law Enforcement shall be a central repository and custodian of crime statistics for the State. Under the rule of construction

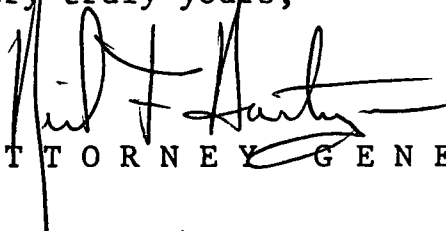
set forth in Pliakos v. Liquor Control Commission, it must be assumed that the General Assembly, in enacting "AN ACT in relation to criminal identification and investigation", intended to create an effective law on the compilation and maintenance of crime statistics and information. In order for the Act to be effective, the information submitted to the Department by local law enforcement agencies and officers of the court must be accurate and complete. (See Ill. Rev. Stat. 1981, ch. 38, par. 206-2.1.) If the accuracy of such information cannot be verified by the Department, the effectiveness of the Act would be impaired, if not defeated.

The Department of Law Enforcement is granted no express power to audit the accuracy of the information requested by the Department under the provisions of "AN ACT in relation to criminal identification and investigation". It is, however, the express duty of the Department under the Act to be a central repository and custodian of crime statistics and information for the State. Moreover, under section 8 of the Act, the Department is granted the express power to demand and receive cooperation in the submission of crime statistics from all units of government. Since it may be necessary to acquire police reports or other material from local law enforcement agencies in order to verify the accuracy of information requested pursuant to section 8 of the Act, and thus ensure the

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maintenance of complete and accurate criminal records and statistics, it is my opinion that the power to request and receive such material is implied in the express grant of authority to the Department.

Very truly yours,



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