



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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ADMINISTRATIVE LAW:
Whether Northeastern Illinois
Planning Commission Is a
State Agency

Honorable Harry Yourell
State Representative
Chairman, Joint Committee on
Administrative Rules
520 South Second Street, Suite 100
Springfield, Illinois 62706

Dear Representative Yourell:

This responds to your letter wherein you ask whether the Northeastern Illinois Planning Commission (hereinafter referred to as NIPC) is a State agency for the purposes of the Illinois Administrative Procedure Act. (Ill. Rev. Stat. 1977, ch. 127, par. 1001 et seq.) Section 3.01 of that Act (Ill. Rev. Stat. 1977, ch. 127, par. 1003.01, as amended by Public Act 80-1457) defines the term "State agency" as follows:

"'Agency' means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission,

Honorable Harry Yourell - 2.

agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, 'agency' does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate courts.

No entity shall be considered an 'agency' for the purposes of this Act unless authorized by law to make rules or to determine contested cases." (Emphasis added.)

It is my opinion that NIPC does not qualify as a State agency under this definition. In opinion No. NP-770, I examined the nature of NIPC and advised that it was a body politic and corporate, separate and apart from State government. I stated in that opinion as follows:

" * * *

NIPC is defined in section 4 of the Northeastern Illinois Planning Act (Ill. Rev. Stat. 1973, ch. 85, par. 1104) as a 'body politic and corporate' -- a separate governmental entity exercising a specific and distinct governmental function -- planning. It is no part of the counties, cities, villages, townships, park districts, etc., located in the six county area of northeastern Illinois. It is also separate and apart from state government. State executive government has no control over NIPC, or its functions. Indeed, the Northeastern Illinois Planning Act treats the State of Illinois as a separate entity when it provides, at section 36:

Honorable Harry Yourell - 3.

'The Commission may accept and expend funds * * * from any source including grants, bequests, gifts, or contributions made by a person, a unit of government, the State government, or the Federal government.' (emphasis added.) (Ill. Rev. Stat. 1973, ch. 85, par. 1136.)"

I see no basis for changing the conclusion reached in opinion No. NP-770 and find no basis for doing so in the Illinois Administrative Procedure Act. NIPC is a body politic and corporate, but it is not a body politic and corporate of the State. Furthermore, because NIPC is separate and apart from the State government, it cannot be an administrative unit or corporate outgrowth of the State government.

I am aware that there is some uncertainty regarding the underscored words in section 3.01. The phrase expressly excludes units of local government, school districts and boards of election commissioners from administrative units and corporate outgrowths of the State government. Exceptions to the application of a statute are generally strictly construed. (People v. Chas. Levy Circulating Co. (1959), 17 Ill. 2d 168, 177.) Such strict construction, however, will not be applied to defeat the legislative purpose with respect to a particular provision. Winner v. Kadow (1940), 373 Ill. 192, 195; People ex rel. Hopf v. Barger (1975), 30 Ill. App. 3d 525, 537.

There is no indication that the General Assembly intended that the express exclusion in section 3.01 should

Honorable Harry Yourell - 4.

be interpreted to mean that governmental entities other than the three specified must be considered administrative units or corporate outgrowths of the State government, even though they are separate and apart from the State government. Units of local government, school districts and boards of election commissioners are not part of the State government. The apparent purpose of the express exclusion of these entities is to guarantee that they will not be deemed to be State agencies. The express exclusion is not intended to result in including entities such as NIPC within the definition of "State agency."

Very truly yours,

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