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FILE NO. S-435

EMPLOYMENT:
Discrimination In Hiring
Persons Not Able To Pass
Required Physical Examination

Honorable Bernard L. Oltman
State's Attorney of Tazewell County
Court House
Pekin, Illinois 61554

Dear Mr. Oltman:

I have your letter of recent date wherein you state:

"Tazewell County has for several years maintained a group hospitalization insurance policy on behalf of its employees. All those persons employed by Tazewell County are eligible for coverage under this policy. The premium for this policy however has increased tremendously and the Insurance Committee of the County Board is seeking a way to reduce the cost of this insurance program.

Under the plan, elected county officers and their dependents are required to pay for their insurance coverage; but, employees of the county are covered at no cost to them and they can pay a premium and thereby cover the dependent members of their families.

One of the methods the committee is considering is to require new employees to submit to and pass a physical examination prior to employment or in lieu thereof waive their rights to coverage under the plan.

The question for which they desire an answer is whether or not the County Board of Supervisors can in any way curtail or prevent a county officer from employing a person who cannot pass the required physical examination and who refuses to waive his coverage under the insurance plan."

The question of the power of a County Board of Supervisors to control selection of their employees by individual county officers need not be discussed here inasmuch as the action that you contemplate is not permissible, regardless of which county officer might be involved.

Article I, Section 19 of the Illinois Constitution of 1970 reads as follows:

"All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer." (Emphasis added.)

Discrimination has been defined as "particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to privileges

granted and between whom and those not favored no reasonable distinction can be found." Franchise Motor Freight Association vs. Seavey 196 Cal. 77, 235 P. 1000.

Section 3 of "An Act to prohibit unjust discrimination in the sale or rental of property because of physical or mental handicap, and in employment because of physical or mental handicap unrelated to ability, and providing for penalties" (Ill. Rev. Stats. 1971, ch. 38, par. 65-23) reads, in part:

"It is an unlawful employment practice for an employer:

(1) to refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to his terms, conditions, or privileges of employment otherwise lawful, because of such individual's physical or mental handicap, unless it can be shown that the particular handicap prevents the performance of the employment involved;" (Emphasis added.)

Included in the "terms" of any employment is the compensation received therefrom. Any employee hospitalization benefits financed by an employer is part of this compensation. To ask any employee to waive coverage under such a policy would be discriminatory as to the terms of employment.

Section 2 of said Act reads, in part, as follows:

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"The term 'employer' means a person or governmental unit or officer in this State having in his or its employ one or more individuals; and any person acting in the interest of an employer, directly or indirectly." (Emphasis added.)

It is, therefore, my opinion that the County Board cannot prevent a county officer from employing a person who cannot pass the required physical examination for group hospitalization insurance and who refuses to waive his coverage under the insurance plan, if the handicap is not related to the ability to perform the employment involved.

Very truly yours,

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