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SPRINGFIELD

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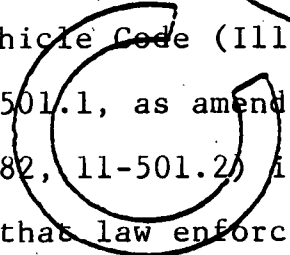
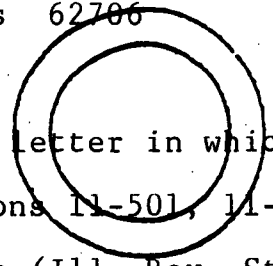
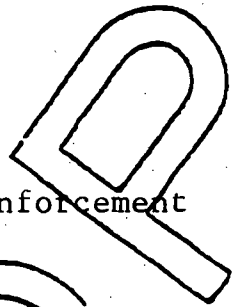
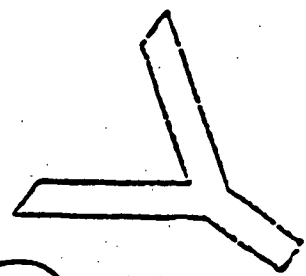
FILE NO. 82-057

MOTOR VEHICLES:
Implied Consent

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

Dear Mr. Zagel:

I have your letter in which you inquire regarding the application of sections 11-501, 11-501.1, and 11-501.2 of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, pars. 11-501, 11-501.1, as amended by Public Act 82-783, effective July 13, 1982, 11-501.2) in the circumstances described below. You advise that law enforcement officers investigating traffic accidents occurring near the borders of the State occasionally have reasonable cause to believe that an injured driver is



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under the influence of alcohol or another drug, or both. Persons injured in such accidents are transported for medical treatment to the nearest hospital, which may be located in an adjacent State. A request for a chemical test to determine whether a driver is under the influence of alcohol or another drug is sometimes based upon an officer's observations at the scene of the accident, prior to transportation of the injured driver, and, at other times, during an interview conducted at the out-of-State hospital. You ask the following questions with regard to the authority of a law enforcement officer to request a driver to submit to chemical testing of blood or urine samples pursuant to the implied consent statute (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 11-501.1, as amended):

- (1) If a law enforcement officer arrests a person for a violation of section 11-501 of The Illinois Vehicle Code in Illinois, may he then request that person to submit to the taking of samples for chemical testing at a hospital in an adjacent State where the person has been transported for medical treatment?
- (2) If a law enforcement officer finds reasonable cause to believe that a driver is under the influence of alcohol or other drug during an interview conducted after transportation to a hospital in an adjacent State, may he then arrest that person for a violation of section 11-501 of The Illinois Vehicle Code and request that person to submit to the taking of samples for chemical testing pursuant to section 11-501.1 of the Code?

Section 11-501 of The Illinois Vehicle Code provides, in part:

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"Driving while under the influence of alcohol, other drug, or combination thereof. (a) A person shall not drive or be in actual physical control of any vehicle within this State while:

1. The alcohol concentration in such person's blood or breath is 0.10 or more based on the definition of blood and breath units in Section 11-501.2;

2. Under the influence of alcohol;

3. Under the influence of any other drug or combination of drugs to a degree which renders such person incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

* * *

"

Section 11-501.1 of The Illinois Vehicle Code provides, in pertinent part:

"Suspension of drivers license--Implied consent.
(a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol, other drug, or combination thereof content of such person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing said officer shall designate which of the aforesaid tests shall be administered by their enforcement personnel.

* * *

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement

officer requesting the test that a refusal to submit to the test will result in suspension of such person's license to operate a motor vehicle for six (6) months for the first such arrest and refusal and a suspension of such privilege for 12 months for the second and each subsequent such arrest and refusal within 5 years. Following this warning, if a person under arrest refuses upon the request of a law enforcement officer to submit to a test designated by the law enforcement agency as provided in paragraph (a) of this Section, none shall be given, but the law enforcement officer shall file with the clerk of the circuit court for the county in which the arrest was made, a sworn statement naming the person refusing to take and complete the test or tests requested under the provisions of this Section. Such sworn statement shall identify the arrested person, such person's driver's license number and current residence address and shall specify that a refusal by said person to take the test or tests was made. Such sworn statement shall include a statement that the arresting officer and reasonable cause to believe the person was driving the motor vehicle within this State while under the influence of alcohol, other drug, or combination thereof and that such test or tests were made as an incident to and following the lawful arrest for an offense as defined in Section 11-501 of this Code or a similar provision of a local ordinance, and that the person after being arrested for an offense arising out of acts alleged to have been committed while so driving or in actual physical control of a motor vehicle refused to submit to and complete a test or tests as requested by the law enforcement officer.

* * *

"

(Emphasis added.)

Section 11-501.1 of The Illinois Vehicle Code also sets forth the hearing procedures for implied consent violations.

Where the intention of the General Assembly is clearly expressed, the plain meaning of a statute must be given effect. (Finley v. Finley (1980), 81 Ill. 2d 317, 326.) The

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language of section 11-501.1 of The Illinois Vehicle Code clearly and unambiguously limits its application to drivers on Illinois highways who have been arrested for a violation of section 11-501 of the Code, or a similar local ordinance. Thus, consent by a driver to submit to chemical testing is implied only after the arrest of the driver as stated above. With this construction in mind, I will address the questions you have posed.

In response to your first question, no provision of The Illinois Vehicle Code requires that a request to submit to chemical testing or the actual taking of samples occur within the boundaries of Illinois. Assuming that a valid arrest is effected in Illinois, it is my opinion that the arresting officer is authorized to request a person thereafter transported and hospitalized in another State to submit to the taking of blood or urine samples for chemical testing and analysis in accordance with the provisions of section 11-501.2 of The Illinois Vehicle Code:

"Chemical and other tests. (a) * * *

1. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of Public Health in consultation with the Department of Law Enforcement by an individual possessing a valid permit issued by that Department for this purpose. The Director of the Department of Public Health in consultation with the Department of Law Enforcement is authorized to approve

satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Illinois Department of Public Health shall prescribe regulations as necessary to implement this Section.

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice medicine, a registered nurse or other qualified person approved by the Department of Public Health may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

* * *

The Director of the Department of Public Health, in consultation with the Department of Law Enforcement, has promulgated and adopted standards and procedures for the collecting and analysis of blood and urine specimens. (See, Standards and Procedures for Testing of Breath, Blood, and Urine for Alcohol and/or Other Drugs, 1981 Illinois Register 14152, et seq.). Under these standards and procedures, when blood or urine samples are taken pursuant to section 11-501.1 of The Illinois Vehicle Code, they are required to be delivered directly to a laboratory certified by the Department of Public Health as "qualified to detect and or quantitate alcohol and/or other drugs in human biological fluids". (See, Rules 11.03, 12.01-12.04, 1981 Illinois Register 14164-14166.) Neither

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statute nor administrative rule requires that such samples be physically taken in Illinois. It is sufficient that samples are collected in the manner specified by the Department of Public Health, and delivered for testing to a certified laboratory.

In response to your second question, it is clear that before a law enforcement officer may validly request a suspect to submit to chemical testing, the suspect must have been placed under arrest for a violation of section 11-501 of The Illinois Vehicle Code. (See, People v. Wierman (1982), 107 Ill. App. 3d 7, 11-12.) In Illinois, a peace officer has no general authority to make a warrantless arrest outside of the political entity in which he holds office. (People v. Clark (1977), 46 Ill. App. 3d 240, 242; cf. People v. Durham (1979), 71 Ill. App. 3d 725, 726-27.) Under a well-established exception to this rule, a peace officer may make a warrantless arrest of a suspected felon outside of his territorial jurisdiction where the offender has fled from that jurisdiction with the officer following in fresh pursuit. (People v. Marino (1980), 80 Ill. App. 3d 657, 661; People v. Clark (1977), 46 Ill. App. 3d 240, 243; People v. Carnivale (1974), 21 Ill. App. 3d 780, 785, aff'd in part, rev'd in part, 61 Ill. 2d 57 (1975); see also, Ill. Rev. Stat. 1981, ch. 38, par. 107-4; Indiana Stat. Ann. § 35-33-1 et seq., (1979, 1982 Supp.); Iowa

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Code Ann., § 806.1 et seq. (1979); Kentucky Rev. Stat. Ann., §§ 431.005, 431.045 (1981); Missouri Ann. Stat. § 455.155 et seq. (1953); Wisconsin Stat. Ann., § 976.04 (1971).) The fresh pursuit exception would not apply in the circumstances which you have described because a violation of section 11-501 of The Illinois Vehicle Code is not a felony, and further, the transportation of an injured person into an adjacent State for medical treatment cannot be characterized as flight from the jurisdiction to avoid arrest.

Therefore, because an Illinois law enforcement officer is without general authority to make a warrantless arrest of a person outside of Illinois for a violation of section 11-501 of The Illinois Vehicle Code, it is my opinion that a person transported to an adjacent State for medical treatment for injuries received in a traffic accident occurring in Illinois may not be arrested in the adjacent State and validly requested to submit to chemical testing pursuant to section 11-501.1 of The Illinois Vehicle Code.

Very truly yours,


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