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FILE NO. S-1310

**CRIMINAL LAW:**

Whether the Recording of  
Emergency Telephone Calls  
to Police Communication Center  
Constitutes Eavesdropping

Honorable Carl E. Hawkinson  
State's Attorney  
Knox County  
Galesburg, Illinois 61401

Dear Mr. Hawkinson:

I have your letter wherein you state that a police department in Knox County plans to record emergency telephone calls made by the public to the police communications center. You ask whether such recording constitutes eavesdropping.

Section 14-2 of the Criminal Code of 1961 (Ill. Rev. Stat. 1976 Supp., ch. 38, par. 14-2) defines the offense of eavesdropping in pertinent part as follows:

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"A person commits eavesdropping when he:

(a) Uses an eavesdropping device to hear or record all or any part of any conversation unless he does so (1) with the consent of all of the parties to such conversation or (2) with the consent of any one party to such conversation and in accordance with Article 108A of the 'Code of Criminal Procedure of 1963', approved August 14, 1963, as amended;

\* \* \*

Section 14-3 of the Code (Ill. Rev. Stat. 1975, ch. 38, par.

14-3) provides in pertinent part:

"The following activities shall be exempt from the provisions of this Article:

\* \* \*

(d) Recording or listening with the aid of any device to any emergency communication made in the normal course of operations by any federal, state or local law enforcement agency or institutions dealing in emergency services, including, but not limited to, hospitals, clinics, ambulance services, fire fighting agencies, any public utility, emergency repair facility, civilian defense establishment or military installation."

Putting aside consideration of the exemption for the moment, the recording of a telephone conversation constitutes eavesdropping unless both parties to the conversation consent to the recording or unless one party consents and authorization is obtained in accordance with article 108A of the Criminal

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Code of 1961. Ill. Rev. Stat. 1976 Supp., ch. 38, par.  
108A-1 et seq.

The authorization obtained pursuant to article 108A is not applicable to the type of recording involved in your question. Before authorizing the recording of a conversation, a circuit judge must find that the conversation concerns the commission of a felony. (Ill. Rev. Stat. 1976 Supp., ch. 38, par. 108A-4.) Since many emergency calls to a police communications center do not relate to the commission of a felony, a judge would not be able to authorize the recording of all emergency calls.

The question remains as to whether such emergency calls could be recorded under the exemption. This exemption was part of the Act when adopted in 1957 (Laws 1957, p. 2362), and has not been subject to reported litigation in the appellate courts. The exception is somewhat ambiguous. It is unclear whether the phrase "made in the normal course of operations by any federal, state or local law enforcement agency \* \* \*" modifies "emergency communication" or "recording or listening".

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In light of this ambiguity the statute must be construed according to the intent of the legislature; in determining this intent consideration must be given to the entire statute, its nature, objects and the consequences which would result from construing it one way or another. (Carrigan v. Liquor Control Commission (1960), 19 Ill. 2d 230, 233.) An interpretation that the phrase "made in the normal course of operations by any federal, state or local law enforcement agency \* \* \*" modifies "emergency communication" would allow anyone to record or listen to emergency communications made by, but not to, law enforcement officers. An interpretation that the phrase modifies "recording or listening with the aid of any device", on the other hand, would allow law enforcement agencies to record and listen to emergency communications as long as the recording and listening was done in the normal course of their operations. The second interpretation serves a broader public purpose; it enables law enforcement agencies to respond quickly and accurately to emergency situations. As a result, I believe that the second interpretation is the correct one.

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It is, therefore, my opinion that when law enforcement agencies, in the normal course of their operations, record emergency telephone calls made by the public to them they are engaging in an activity that is exempt from the statutory definition of "eavesdropping".

Very truly yours,

A T T O R N E Y   G E N E R A L