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FILE NO. 84-011

ADMINISTRATIVE LAW:
Power of the Industrial
Commission to Delegate a
Statutory Duty

Mervin N. Bachman, Chairman
Industrial Commission of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Brown:

I have your letter wherein you inquire whether the Industrial Commission of Illinois may, by contract, delegate its duty to receive and maintain certificates of insurance and notices of termination of insurance coverage under section 4 of the Workers' Compensation Act (Ill. Rev. Stat. 1983, ch. 48, par. 138.4) to the National Council on Compensation Insurance. For the reasons hereinafter stated, it is my opinion that the

Industrial Commission may delegate this function to a designated agent, including the National Council on Compensation Insurance.

Section 4 of the Workers' Compensation Act provides in pertinent part:

"(a) Any employer who shall come within the provisions of Section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission an application for approval as a self-insurer which shall include a current financial statement. * * *

If the sworn application and financial statement of any such employer does not satisfy the Commission of the financial ability of the employer who has filed it, the Commission shall require such employer to,

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, provided that any such employer whose application and financial statement shall not have satisfied the commission of his or her financial ability and who shall have secured his liability in part by excess liability insurance shall be required to furnish to the Commission security, indemnity or bond guaranteeing his or her payment up to the effective limits of the excess coverage, or

(3) Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. * * *

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* * * the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. * * *

* * * or

(4) Make some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his or her compliance with the provision of this Section.

(b) The sworn application and financial statement, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the employer, as the case may be, shall be subject to the approval of the Commission.

Upon the approval of the sworn application and financial statement, security, indemnity or bond or amount of insurance, filed, furnished or carried, as the case may be, the Commission shall send to the employer written notice of its approval thereof. The certification of compliance by the employer with the provisions of subparagraphs (2) and (3) of paragraph (a) of this Section shall be delivered by the insurance carrier to the Industrial Commission within five days after the effective date of the policy so certified. The insurance so certified shall cover all compensation liability occurring during the time that the insurance is in effect and no further certificate need be filed in case such insurance is renewed, extended or otherwise continued by such carrier. The insurance so certified shall not be cancelled or in the event that such insurance is not renewed, extended or otherwise continued, such insurance shall not be terminated until at least 10 days after receipt by the Industrial Commission of notice of the cancellation or termination of said insurance; provided, however, that if the employer has secured insurance from another insurance carrier, or has otherwise secured the payment of compensation in accordance with this Section, and such insurance or other security becomes effective

prior to the expiration of the 10 days, cancellation or termination may, at the option of the insurance carrier indicated in such notice, be effective as of the effective date of such other insurance or security." (Emphasis added.)

According to your letter, the Industrial Commission proposes to contract with the National Council on Compensation Insurance, an association comprised of workers' compensation insurers which acts as a clearinghouse for information for its members, to receive and maintain the certificates and notices required to be tendered under subsection 4(b) of the Workers' Compensation Act. The contract would designate the National Council on Compensation Insurance as the agent of the Commission for this purpose and as the custodian of these documents. The National Council on Compensation Insurance would furnish the Commission with microfilm copies of all forms submitted pursuant to subsection 4(b) of the Act, and would also provide direct access to the computerized records containing information taken from the forms. It is my understanding that the Industrial Commission would supervise the performance of its agent, the National Council on Compensation Insurance, to maintain the integrity of the record-keeping process.

As a general principle, an administrative agency cannot delegate powers, authority or functions which are quasi-judicial in character or which require the exercise of discretion or personal judgment. (Commonwealth Edison v.

Pollution Control Board (1974), 25 Ill. App. 3d 271, 279-80, aff'd in part, rev'd in part, 62 Ill. 2d 494 (1976); Kerr McGee Nuclear Corporation v. New Mexico Environmental Improvement Board (App. Ct. N.M. 1981), 637 P.2d 38, 47; but see Warren v. Marion County (S. Ct. Or. 1960), 353 P.2d 257, 264, holding that there is no general proscription against the redelegation of authority between government agencies.) Administrative agencies may, however, even absent specific authority, delegate the performance of ministerial functions to another. (Krug v. Lincoln National Life Insurance Co. (5th Cir. 1957), 245 F.2d 848, 853; Hall v. Marshall (D.C. Pa. 1979), 476 F. Supp. 262, 273; California School Employees Association v. Personnel Commission of Pajaro Valley Unified School District (S. Ct. Cal. 1970), 474 P.2d 436, 439; Bunger v. Iowa High School Athletic Association (S. Ct. Iowa, 1972), 197 N.W.2d 555, 560; State v. Imperatore (Super. Ct. N.J. 1966), 223 A.2d 498, 501; Anderson v. Grand River Dam Authority (S. Ct. Ok. 1968), 446 P.2d 814, 817-18; State Tax Commission of Utah v. Katsis (S. Ct. Ut. 1936), 62 P.2d 120, 122-23; Schechter v. County of Los Angeles (App. Ct. Cal. 1968), 65 Cal. Rptr. 739, 742; Vanderveer v. Vanrauwendaal (App. Ct. N.Y. 1977), 392 N.Y.S.2d 216, 218.) An official power or duty is ministerial when it is absolute, certain and imperative, involving merely the execution of a specific duty arising from fixed and designated

Mervin N. Bachman - 6.

facts. People v. May (1911), 251 Ill. 54, 57; Ill. Att'y Gen. Op. No. NP-1152, issued September 27, 1976, at 3.

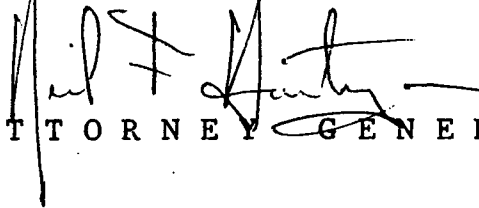
Section 4 of the Workers' Compensation Act requires insurers to deliver copies of certificates of insurance and notices of termination of insurance coverage to the Industrial Commission after approval of an employer's application as a self-insurer. The Commission is required only to receive and maintain such certificates and notices for the period of time specified by law. (See Ill. Rev. Stat. 1983, ch. 48, par. 138.17.) Because this function requires no exercise of discretion or judgment by the Industrial Commission, it is a ministerial duty which may properly be delegated to an agent. Moreover, ministerial duties may, in appropriate circumstances, be delegated to nongovernmental entities. (See Cincinnati Gas and Electric Co. v. Public Utilities Commission (S. Ct. Ohio 1952), 106 N.E.2d 642, 644.) Therefore, it is my opinion that the Industrial Commission may, by contract, delegate the duty to receive certificates of insurance and notices of termination of insurance coverage to an agent, including the National Council on Compensation Insurance.

It should be noted, however, that if the Industrial Commission delegates this function to an agent, the agent will be bound to perform the function in the same manner as would the Commission. Thus, any limitations or stipulations governing the method of performing that function, including the

Mervin N. Bachman - 7.

period of time for which the records must be maintained (see Ill. Rev. Stat. 1983, ch. 48, par. 138.17), will apply to the agent as well.

Very truly yours,



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