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STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 81-019

PUBLIC HEALTH:
Authority of the Illinois
Department of Public Health to
Require Local Health Departments to
Employ a Director of Nursing and a
Director of Environmental Health

William L. Kempiners, Director
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

Dear Mr. Kempiners:

I have your letter wherein you inquire whether the Department of Public Health may, by regulation, require county and multiple-county health departments to employ a director of nursing and a director of environmental health in addition to appointing a medical health officer or public health administrator. If so, you have inquired whether the Department may withhold grants of State and Federal funding from those local health departments not employing a director of nursing and a director of environmental health. For the

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reasons hereinafter stated, it is my opinion that the Department of Public Health may not require local health departments to employ either a director of nursing or a director of environmental health.

As you are aware, "AN ACT in relation to the establishment and maintenance of county and multiple-county public health departments" (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c et seq.) provides for the creation and operation of local health departments. Section 14 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c13) provides that the board of health of each county or multiple-county health department shall:

"

* * *

10. Appoint a medical health officer as the executive officer for the department, who shall be a citizen of the United States and shall possess such qualifications as may be prescribed by the State Department of Public Health; or appoint a public health administrator who shall possess such qualifications as may be prescribed by the State Department of Public Health as the executive officer for the department, provided that the board of health shall make available medical supervision which is considered adequate by the Director of Public Health;

10 1/2. Appoint such professional employees as may be approved by the executive officer who meet the qualification requirements of the State Department of Public Health for their respective positions provided, that in those health departments temporarily without a medical health officer or public health administrator approval by the State Department of Public Health shall suffice;

11. Appoint such other officers and employees as may be necessary;

* * *

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(Emphasis added.)

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As indicated above, a local board of health is required by statute, in accordance with subsections 14(10) and 14(11), to appoint only a medical health officer or a public health administrator and such other officers and employees as may be necessary. Subsection 14(10 1/2) requires only that the professional employees appointed by a local board of health, with the approval of its executive officer, meet certain State qualification requirements. With the exception of section 15 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c14), there is no other provision relating to the appointment of officers and employees. Section 15 provides that:

"Each county or multiple-county health department shall have the exclusive right to employ and discharge its officers and employees, except as otherwise provided in Section 14; provided that in counties having a civil service system, the employees of the health department shall be subject to the rules and regulations of such system." (Emphasis added.)

There is no provision specifically requiring that the local board of health appoint a director of nursing and a director of environmental health as such.

As you have pointed out, section 1.1 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c.01) provides in pertinent part that:

" * * * The State Department of Public Health is authorized to promulgate rules and regulations setting forth minimum standards for programs and performance. The Department is further authorized to prescribe minimum qualifications for the professional, technical, and administrative staff."

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Pursuant to section 1.1 of the Act, the Department has promulgated "Rules and Regulations Concerning Minimum Qualifications for Public Health Personnel Employed by Full-Time Local Health Departments" and "Standards for Local Health Departments in Illinois". Standard 1.1.1 of the latter provides:

"Activity: Leadership

- 1.1.1 Employ a qualified medical health officer or public health administrator, and appropriately qualified persons in Public Health Nursing and Environmental Health.

Performance Standard: Leadership

- *1.1.1 Administrative Staff shall meet the qualifications as set forth in the latest 'Rules and Regulations Concerning Minimum Qualifications for Public Health Personnel Employed by Full-Time Health Departments' promulgated by the Illinois Department of Public Health *Mandatory item for Program Review Approval"

Additionally, according to your letter:

" * * *

* * * The Department of Public Health has interpreted Standard 1.1.1 of the performance standards to require that each health department employ not only a medical health officer or public health administrator, but also a Director of Environmental Health and a Director of Nursing who meet the minimum qualifications for these positions as prescribed in the minimum qualifications for personnel employed in local health departments.

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Although an express legislative grant of power or authority includes the grant of power to do all that is reasonably necessary to execute that power or authority specifically conferred (People v. Floom (1977), 52 Ill. App. 3d 971, 975;

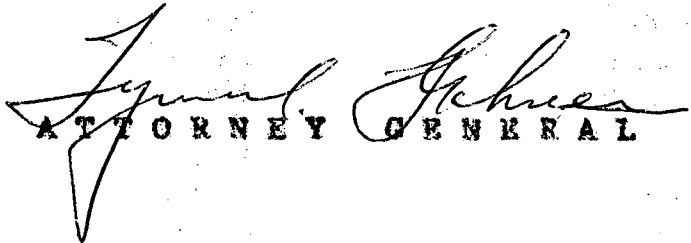
Stanley Mfg. v. Environmental Protection Agency (1972), 8 Ill. App. 3d 1018, 1023), nowhere in section 1.1 or elsewhere in the Act is the Department expressly authorized to require a county or multiple-county health department to employ a director of nursing or a director of environmental health. Section 1.1 of the Act authorizes the Department to promulgate rules and regulations "setting forth minimum standards for programs and performance" and "to prescribe minimum qualifications for the professional, technical, and administrative staff", with respect to persons required or authorized by the Act to be appointed. I do not read section 1.1 as a grant of authority to the Department to mandate the employment of any officers other than those specifically required to be appointed under section 14 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c13), particularly in view of section 15 of the Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par. 20c14), which provides that local health departments have the exclusive right to employ their officers and employees.

Consequently, because a statute may not be altered, extended or added to by the exercise of a power to promulgate rules and regulations thereunder (Northern Ill. Auto Workers v. Dixon (1979), 75 Ill. 2d 53, 60; Saxon-Western Corp. v. Mahin (1979), 78 Ill. App. 3d 125, 129), it is my opinion that the Department is not authorized to require the employment of a director of nursing or a director of environmental health by

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any rule, regulation or performance standards having that effect. Therefore, an interpretation of Performance Standard 1.1.1 mandating such employment would be invalid and of no effect. For the same reasons, it is my opinion that the Department is not authorized to withhold grants of State or Federal funding to those county or multiple-county health departments which do not employ such personnel.

Very truly yours,


ATTORNEY GENERAL