OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 13, 1998

Jim Ryan
ATTORNEY GENERAL

FILE NO. 98-014

INSURANCE:
Use of Intergovernmental Joint
Insurance Pool for Employee
Health Care Insurance

The Honorable Marty Butler
Chairman, Senate Local Government
and Elections Committee
State Senator, 28th District
800 East Northwest Highway, Suite 102
Mount Prospect, Illinois 60056

Dear Senator Butler:

I have your letter wherein you inquire whether the Illinois Public Risk Fund (hereinafter referred to as "IPRF") may expand its coverage to provide group health insurance benefits for its members' employees and their dependents. For the reasons hereinafter stated, it is my opinion that counties and home rule municipalities may jointly self-insure with respect to employee health care benefits, but that non-home-rule municipalities do not have the authority to do so. Other public agencies which are members of IPRF may jointly self-insure for such benefits only if

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they possess statutory authority to provide those benefits through self-insurance.

You have stated that IPRF was organized in 1986 pursuant to section 6 of the Intergovernmental Cooperation Act (5 ILCS 220/6 (West 1996)) (hereinafter referred to as "the Act") and article VII, section 10 of the Illinois Constitution of 1970 as a group self-insurance fund to provide liability and Workers' Compensation coverage to its members. Its membership includes units of local government and State agencies. IPRF is considering expanding the benefits currently provided to its members to include health insurance coverage for its members' employees and their dependents. A question has arisen whether employee health benefits constitute an "insurable area", for purposes of section 6 of the Act, in which IPRF may provide joint self-insurance benefits.

Article VII, section 10(a) of the Illinois Constitution provides, in part:

> "(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associ-

> ations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.
>
> * * * "

Section 6 of the Act provides:

> "An intergovernmental contract may, among other undertakings, authorize public agencies to jointly self-insure and authorize each public agency member of the contract to utilize its funds to pay to a joint insurance pool its costs and reserves to protect, wholly or partially, itself or any public agency member of the contract against liability or loss in the designated insurable area. Within 30 days after January 1, 1991, and within 30 days after each January 1 thereafter, public agencies that are jointly self-insured to protect against liability under the Workers' Compensation Act [820 ILCS 305/1 et seq.] and the Workers' Occupational Diseases Act [820 ILCS 310/1 et seq.] shall file with the Industrial Commission a report indicating an election to self-insure."

My predecessors have consistently concluded that, although the Intergovernmental Cooperation Act authorizes the sharing and joint exercise of powers by units of local government, it is not an independent grant of authority and cannot authorize an entity to exercise powers which are not otherwise granted by law. (See, e.g., Ill. Atty Gen. Op. No. NP-636, issued October 17, 1973; Ill. Att'y Gen. Op. No. NP-637, issued October 17, 1973; Ill. Att'y Gen. Op. No. NP-712, issued March 7,

1974; 1978 Ill. Att'y Gen. Op. 165; 1991 Ill. Att'y Gen. Op. 158.) I concur in that interpretation.

Whether a particular liability is a "designated insurable area" for purposes of section 6 of the Act, therefore, depends in part upon whether the public entity contemplating entering into the agreement has the authority, apart from the Act, to self-insure for that liability. Home rule municipalities have reasonably broad authority to self-insure with respect to matters pertaining to their government and affairs. (Clayton v. Village of Oak Park (1983), 117 Ill. App. 3d 560, 564.) Counties have been granted specific authority to self-insure with respect to the provision of health insurance for their employees. (55 ILCS 5/5-1069 (West 1996).) Therefore, those entities may clearly provide those benefits through a joint self-insurance program.

Non-home-rule municipalities, however, have not been granted the authority to self-insure for employee health insurance. Although section 10-4-2 of the Municipal Code (65 ILCS 5/10-4-2 (West 1996)) generally authorizes municipalities to provide for group life, health, accident, hospital and medical coverage for employees and their dependents, subsection 10-4-2(c) provides:

" * * *

> (c) The corporate authorities may exercise the powers granted in this Section only if the kinds of group insurance are obtained from an insurance company authorized to do business in the State of Illinois. The corporate authorities may enact an ordinance prescribing the method of operation of the insurance program.
>
> * * * "
>
> (Emphasis added.)

In order to provide such insurance coverage, therefore, non-home-rule municipalities must obtain the coverage from insurance companies authorized to do business in Illinois. Unlike section 5-1069 of the Counties Code, the option to self-insure is not granted. IPRF, as an entity created to provide for joint self-insurance under the Intergovernmental Cooperation Act, is not an insurance company. See Clayton v. Village of Oak Park (1983), 117 Ill. App. 3d 560, 564-65.

The provision of employee group health coverage by local public entities other than municipalities and counties is authorized either by statutory provisions pertaining to those entities specifically (see, e.g., 60 ILCS 1/100-15 (West 1996), with respect to townships), or by section 3 of the Government Salary Withholding Act (50 ILCS 125/3 (West 1996)). Although these provisions do not specifically authorize self-insurance, neither do they require that insurance coverage be obtained from

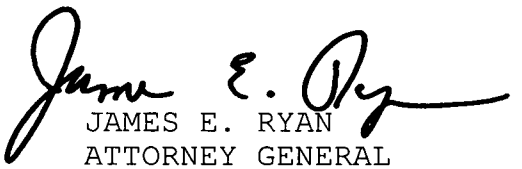
an authorized insurance company. There being no restriction upon the authority to provide coverage, it is my opinion that such entities may do so through a joint insurance pool, provided that the agreement establishing the pool and any governing by-laws permit participating entities to comply with any coverage restrictions or definitions contained in the statutes.

You have indicated that some units of State government may be members of IPRF. The extent to which various units of State government are authorized to provide employee benefits apart from those authorized by and through the Department of Central Management Services is limited both by statute and by the appropriation of funds. It would, therefore, be necessary to examine both the authority and funding of any particular State agency which might be a potential participant in the joint health coverage to determine whether it may participate.

For the reasons stated, it is my opinion that employee health coverage is an "insurable area", for purposes of section 6 of the Intergovernmental Cooperation Act. The extent to which each of the members of IPRF may participate in a joint self-insurance pool for the purpose of providing such coverage,

however, will be governed by the specific statutes authorizing the provision of the employee benefits.

Sincerely,



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