



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

July 27, 1993

FILE NO. 93-019

COUNTIES:

Authority of a County Emergency
Services and Disaster Agency's Volunteers

Honorable Gary W. Pack
State's Attorney, McHenry County
McHenry County Courthouse
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your predecessor's letter wherein he inquired whether a county emergency services and disaster agency may employ volunteers to provide traffic and crowd control services in the event of a disaster. In addition, he also inquired whether a county emergency services and disaster agency may create and appoint an auxiliary police unit to assist the sheriff and local police with traffic and crowd control services during a disaster. For the reasons hereinafter stated, it is my opinion that county emergency services and disaster agency volunteers may not generally provide traffic and crowd control services upon the highways of the State, except when summoned to aid the sheriff or a deputy sheriff

in maintaining the peace. Further, it is my opinion that a county emergency services and disaster agency does not have the authority to create and maintain an auxiliary police unit.

The Emergency Management Agency Act (Ill. Rev. Stat. 1991, ch. 127, par. 1051 et seq.; 20 ILCS 3305/1 et seq. (West 1992)) was enacted to ensure that a State-wide plan for preserving the lives and property of the people of the State and for protecting the public peace, health and safety in the event of a disaster was prepared. (Ill. Rev. Stat. 1991, ch. 127, par. 1052; 20 ILCS 3305/2 (West 1992).) Under the terms of the Act, each political subdivision of the State is under the jurisdiction of the Illinois Emergency Management Agency, a State agency which was created, inter alia, to coordinate the overall emergency management program of the State and to promulgate rules and requirements for the emergency operations plans of the State's political subdivisions. (Ill. Rev. Stat. 1991, ch. 127, par. 1056(f); 20 ILCS 3305/5(f) (West 1992).) Each political subdivision of the State is also under the jurisdiction of an emergency services and disaster agency, a local agency responsible for, inter alia, developing, planning and implementing programs for disaster preparedness, response and recovery. (Ill. Rev. Stat. 1991, ch. 127, pars. 1054, 1060; 20 ILCS 3305/4, 3305/10 (West 1992).) The phrase "political subdivision" includes any county, city, village or incorporated town and any township located in a county having a population of

more than 2,000,000. (Ill. Rev. Stat. 1991, ch. 127, par. 1054; 20 ILCS 3305/4 (West 1992).) Although political subdivisions and emergency services and disaster agencies may generally utilize volunteers when providing emergency and disaster relief services (see Ill. Rev. Stat. 1991, ch. 127, pars. 1060(k), 1070; 20 ILCS 3305/10(k), 3305/20 (West 1992)), that does not necessarily mean that traffic and crowd control services constitute the type of assistance that volunteers may provide. A review of the provisions of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 1-100 et seq.; 625 ILCS 5/1-100 et seq. (West 1992)) indicates that police officers, firefighters and uniformed school crossing guards who have been invested by law with the requisite authority may direct, control or regulate traffic on the highways of the State. (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 11-203; 625 ILCS 5/11-203 (West 1992).) The term "highway", as used in the Act, means "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel". (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 1-126; 625 ILCS 5/1-126 (West 1992).) Similarly, the phrase "police officer" refers to "[e]very officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations". (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 1-162; 625 ILCS 5/1-162 (West 1992).)

Pursuant to statute, the officers invested with the general authority to direct or regulate traffic on public highways include the State Police (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 16-102; 625 ILCS 5/16-102 (West 1992)), the Secretary of State's investigators (Ill. Rev. Stat. 1991, ch. 95 1/2, pars. 2-115, as amended by Public Act 87-993, effective September 1, 1992, 16-102; 625 ILCS 5/2-115, 5/16-102 (West 1992)), the municipal police (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 16-105; 625 ILCS 5/16-105 (West 1992)) and the county sheriff and his or her deputies (Ill. Rev. Stat. 1991, ch. 34, pars. 3-6035, 3-6036; 55 ILCS 5/3-6035, 5/3-6036 (West 1992)). Nothing in the Emergency Management Agency Act, the Illinois Vehicle Code or other pertinent statutes, however, delegates to emergency services and disaster agencies, their employees or their volunteers the authority to direct or control traffic on public highways. Rather, the Emergency Management Agency Act contemplates that emergency services and disaster agencies are to rely upon the police forces of a political subdivision in providing emergency police functions. (Ill. Rev. Stat. 1991, ch. 127, par. 1053; 20 ILCS 3305/3 (West 1992).) Therefore, in the absence of either express or implied authority to do so, it is my opinion that a county emergency services and disaster agency volunteer may not generally engage in traffic and crowd control activities on the highways of this State.

Notwithstanding these conclusions, I do not discount the possibility that traffic and crowd control services might

properly be rendered by county emergency services and disaster agency volunteers in certain circumstances. Sections 3-6021 and 3-6022 of the Counties Code (Ill. Rev. Stat. 1991, ch. 34, pars. 3-6021, 3-6022; 55 ILCS 5/3-6021, 5/3-6022 (West 1992)) respectively provide:

"Conservator of the peace. Each sheriff shall be conservator of the peace in his or her county, and shall keep the same, suppress riots, routs, affrays, fighting, breaches of the peace, and prevent crime; and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination."

"Posse comitatus. To keep the peace, prevent crime, or to execute any warrant, process, order or judgment he or she may call to his or her aid, when necessary, any person or the power of the county."

Under the language of section 3-6022, either the county sheriff or a deputy sheriff (see Ill. Rev. Stat. 1991, ch. 34, par. 3-6015; 55 ILCS 5/3-6015 (West 1992)) may request the assistance of any person of the county in order to keep the peace. In responding to a request for assistance, it has long been recognized that a person summoned by the sheriff is authorized to exercise the same powers as the sheriff. (Main v. McCarty (1854), 15 Ill. 441, 443; People v. DeBlieck (1989), 181 Ill. App. 3d 600, 608; 1976 Ill. Att'y Gen. Op. 166, 167.) Section 3-6021 of the Counties Code authorizes each sheriff to suppress breaches of the peace. Because persons aiding the sheriff are authorized to exercise the same powers as the

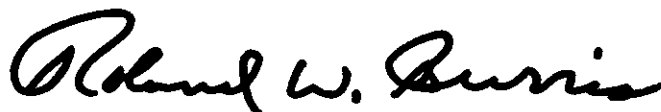
sheriff, individuals called upon to render assistance are also authorized to suppress breaches of the peace.

Although the phrase "breach of peace" is not defined in the Counties Code, the Illinois courts have indicated that the violation of traffic laws may constitute a "breach of peace", since a violation of the State's traffic laws may lead to disorder and could endanger the lives and security of the people of the State. (People v. Flinn (1977), 47 Ill. App. 3d 357, 360.) Consequently, it is my opinion that a sheriff may call to his or her aid the volunteers of a county emergency services and disaster agency to provide traffic and crowd control services during an emergency in order to prevent a breach of peace, and that volunteers responding to that call could properly perform such duties.

Your predecessor also inquired whether a county emergency services and disaster agency may create an auxiliary police unit to assist the sheriff or the municipal police with traffic and crowd control during times of disaster. It is well established in Illinois that units of local government and their agencies possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers which may be necessarily implied therefrom to effectuate the power which has been granted. Lake County Bd. of Review v. Property Tax Appeal Bd. (1988), 119 Ill. 2d 419, 427-28; Illinois Bell Telephone Co. v. Illinois Commerce Comm'n (1990), 203 Ill. App. 3d 424, 438.

Under the provisions of the Emergency Management Agency Act, each emergency services and disaster agency has been authorized to prepare emergency operations plans and statements of emergency responsibilities for all local departments and officials within its geographic boundaries, to coordinate emergency management activities including disaster training exercises and to develop mutual aid agreements. (Ill. Rev. Stat. 1991, ch. 127, pars. 1060, 1063; 20 ILCS 3305/10, 3305/13 (West 1992).) Implicit within this grant of power is the authority for a county emergency services and disaster agency to employ those services which are reasonably necessary for developing and coordinating the emergency operations plan. Nothing in the language of the Act, however, either expressly or impliedly grants to an emergency services and disaster agency the authority to create an auxiliary police force, or even delegates to such agencies the general authority to enforce penal laws. Consequently, it is my opinion that a county emergency services and disaster agency does not possess the authority to create or appoint an auxiliary police force.

Respectfully yours,

A handwritten signature in cursive script that reads "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL