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SPRINGFIELD

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STATE MATTERS:

**Authority of the Director of the
Department of Insurance to Create an
Entity Not a Part of the Department of
Insurance**

Honorable Robert G. Cronson
Auditor General
Lincoln Tower Plaza, 2d Floor
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Springfield, Illinois 62706

Dear Mr. Cronson:

I have your letter wherein you inquire whether the Director of the Department of Insurance, in carrying out his statutory responsibilities under the Illinois Insurance Code (Ill. Rev. Stat. 1979, ch. 75, par. 613 et seq.) as receiver of insurance companies which are adjudicated delinquent and which may be subject to liquidation, rehabilitation, or conservation, may create an entity which is not a part of the Department of Insurance. You have also inquired whether the entity which has been designated by the Director of the Department of Insurance as the "Bureau of Liquidations" is subject to the Comptroller's uniform accounting system as established by section 7 of the State Comptroller Act (Ill.

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Rev. Stat. 1979, ch. 15, par. 207) and the Illinois Purchasing Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.1 et seq.).

For the reasons hereinafter stated, it is my opinion that the Director of the Department of Insurance is not authorized to create an entity which is not a part of the Department of Insurance, to carry out his duties as receiver under the Illinois Insurance Code.

According to your letter, "in exercising his authority as receiver, the Director of the Department of Insurance has identified certain staff and resources to carry out his statutory duty and those individuals and resources are commonly referred to as the Bureau of Liquidations. The term 'Bureau of Liquidations' does not appear in the Illinois Revised Statutes." In addition, according to information received from the Department of Insurance:

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* * *

The Illinois Director of Insurance is designated in the Insurance Code as receiver of insurance companies which on the petition of the Director through his counsel, the Attorney General, are found by the Circuit Court to be delinquent and which are the subject of an order of court placing the companies in rehabilitation, liquidation or conservation (Ill. Rev. Stat. 1979, Ch. 73, par. 799 et seq.). The rehabilitation, liquidation or conservation proceedings are in the nature of judicially supervised receivership proceedings.

In order to perform his duties as receiver, the Director is authorized to appoint special deputies and staff. The salaries of such persons and all other expenses incurred by the Bureau in the administration of delinquent company estates are paid from the assets of the companies which are the subject of delinquency proceedings and are

subject to the approval of the court having jurisdiction over the delinquency proceedings (Ill. Rev. Stat. 1979, Ch. 73, par. 814). It is recognized in Section 814 of the Insurance Code that there may be periods when there are inadequate ready assets available from company estates for the payment of Bureau expenses. This Section provides in such instances for the disbursement of appropriated funds for salaries with the provision that such funds be repaid to the State Treasury from any funds or assets which may subsequently become available from company estates. This, however, is a matter strictly within the discretion of the Director. Therefore, other than in very rare circumstances, the salaries and other expenses incurred in the operation of the Bureau are funded from the assets of the insurance companies which are the subject of the delinquency proceedings and not from State or public funds.

As stated, the Bureau's function is strictly limited to the administration of judicially supervised rehabilitation, liquidation and conservation proceedings for delinquent insurance companies. The Bureau has no regulatory or law enforcement function, promulgates no rules or regulations nor otherwise performs any function of executive nature.

* * *

Bureau employees are not covered by civil service or paid with State funds; the Bureau operates on the same basis as a private trustee or administrator. The activities of the Bureau, with respect to any particular insurance company for which there are grounds for rehabilitation, liquidation or conservation, begin after the filing of a complaint with the appropriate circuit court and a finding that grounds for such proceedings exist, and the court issues an order transferring the property, business and affairs of the company to the Director of Insurance. Thereafter, the property of the company is dealt with by the Bureau under the supervision of the court.

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Article XIII of the Illinois Insurance Code (Ill. Rev. Stat. 1979, ch. 73, pars. 799-833) ascribes specifically to the Director of the Department of Insurance the authority

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to act as conservator (Ill. Rev. Stat. 1979, ch. 73, pars. 800.1, 809), rehabilitator (Ill. Rev. Stat. 1979, ch. 73, par. 804), and liquidator (Ill. Rev. Stat. 1979, ch. 73, par. 805) of insurance companies subject to the provisions of that article. In addition to the other powers granted the Director of the Department of Insurance therein, he is specifically vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. (Ill. Rev. Stat. 1979, ch. 73, par. 803.)

Section 202 of the Code (Ill. Rev. Stat. 1979, ch. 73, par. 814) specifically authorizes the Director to appoint assistants and employ personnel to assist in the exercise of his statutorily prescribed duties. That section provides in pertinent part that:

"For the purpose of this article, the Director shall have power to appoint one or more special deputies as his agent or agents and to employ such clerks, assistants, or attorneys as may by him be deemed necessary, and to give each of such persons such powers to assist him as he may consider wise."

Consequently, it is clear that in discharging his specific statutory responsibilities, the Director may delegate authority. Apparently the Director has done so by appointing and employing such personnel and identifying that administrative division which deals with matters under Article XIII of the Code as the "Bureau of Liquidations". Moreover, because an express grant of power or duty by the General Assembly to an administrative

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body or officer to do a particular thing includes the express grant of power to do all that is reasonably necessary to execute that power or duty (Meana v. Morrison (1975), 28 Ill. App. 3d 849, 854; Staley Mfg. v. Environmental Protection Agency (1972), 8 Ill. App. 3d 1018, 1023), it appears that even absent the specific statutory authority found in section 202 of the Insurance Code, the Director would be authorized to hire within the Department of Insurance those employees deemed by him to be necessary to assist in the discharge of his statutory duties under Article XIII of the Insurance Code.

The Department of Insurance is a department of State government created by legislative act. (Ill. Rev. Stat. 1979, ch. 127, par. 3.) As head of a department and an agency of the State created by legislative act, the Director of the Department of Insurance has no power or authority beyond that conferred upon him by the legislature (People ex rel. v. Biggs (1949), 402 Ill. 401, 409; Dep't of Public Works v. Schlich (1935), 359 Ill. 337, 345-56), and as discussed above, that power necessarily implied from the express grant. Consequently, the Director must find the source of authority to act in the statutes and exercise the authority in conformity therewith. (The People v. Richeimer (1921), 298 Ill. 611, 618.) Although, also as discussed above, in performing his statutory duties under Article XIII of the Insurance Code, the Director is clearly authorized to create an administrative division within the Department of Insurance itself and is apparently not precluded from identifying it as the "Bureau of Liquidations",

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no authority exists which empowers him to create a separate entity not a part of the Department of Insurance. Moreover, the General Assembly has the sole duty and responsibility of legislating (People v. Chicago Transit Authority (1946), 392 Ill. 77, 85; People v. Barnett (1931), 344 Ill. 62, 66) and the authority to create an entity, agency, or sub-agency of State government clearly appears to be a legislative function possessed only by the General Assembly. Consequently, the division which administers the statutes found in Article XIII of the Insurance Code relating to liquidation, rehabilitation and conservation, whether identified as the "Bureau of Liquidations" or otherwise, is a part of the Department of Insurance.

You have also inquired whether the "Bureau of Liquidations" is subject to the Comptroller's uniform accounting system as established by section 7 of the State Comptroller Act (Ill. Rev. Stat. 1979, ch. 15, par. 207) and the Illinois Purchasing Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.1 et seq.). Because that administrative division of the Department of Insurance which administers Article XIII of the Insurance Code, whether designated as the "Bureau of Liquidations" or otherwise, is a part of the Department of Insurance, the determinative question is not whether the "Bureau of Liquidations" is subject to the two statutory controls in question, but rather whether the Department of Insurance is subject.

Firstly, I will consider the application of section 7 of the Comptroller Act (Ill. Rev. Stat. 1979, ch. 15, par. 207)

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to the Department of Insurance. Section 7 of that Act provides in pertinent part that:

"State accounting system--State agencies defined--accounts notice of change. In accordance with generally accepted accounting principles applicable to government the comptroller shall develop and prescribe for the use of all State agencies a uniform accounting system, applying the encumbrance method of accounting and so designed as to insure compliance with all legal and constitutional requirements including those respecting the receipt and expenditure of and the accountability for public funds.

For purposes of this Act, 'State agencies' or 'agencies' means all departments, officers, authorities, public corporations and quasi-public corporations, commissions, boards, institutions, State colleges and universities and all other public agencies created by the State, other than units of local government and school districts. The comptroller shall keep accounts with respect to each State agency which shall accurately reflect the receiving, expending or contracting for the receipt or expenditure of money or other assets on behalf of the State and shall keep accounts of all amounts which may be paid into or out of the State treasury or held or paid out by the State Treasurer.

* * *

(Emphasis added.)

Because the Department of Insurance is a department of State government, it clearly falls within the above definition of "State agencies" and consequently is generally subject to the section 7 requirement concerning the use of the Comptroller's uniform accounting system. However, whether the operations of the Department of Insurance, Bureau of Liquidations Division, are required to be accountable to the Comptroller's office in accordance with section 7 of the Act appears, in this case, to be a separate question.

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Section 7, as indicated above, provides for a uniform accounting system by the Comptroller to "insure compliance with all legal and constitutional requirements including those respecting the receipt and expenditure of and the accountability for public funds" (emphasis added) and for the keeping of accounts by the Comptroller which reflect the "receiving, expending or contracting for the receipt or expenditure of money or other assets on behalf of the State" and "of all amounts which may be paid in or out of the State treasury or held or paid out by the State Treasurer" (emphasis added). Section 7 is clearly, by its own terms, intended to prescribe a method of accounting with respect to public funds. Moreover, the Comptroller is not constitutionally or statutorily required to account for the receipt and expenditure of any funds other than the State's central fiscal accounts and funds held by the State Treasurer. (Ill. Const. 1970, art. V, § 17; Ill. Rev. Stat. 1979, ch. 15, par. 202) According to information received from the Department of Insurance, funds for the operation of the "Bureau of Liquidations" are provided, subject to court approval, from the assets of the insurance company which is the subject of the proceedings. They are not public funds. In addition, according to the Department of Insurance, the Bureau's activities are on the behalf of the private creditors of the companies, not on behalf of the public. (The People v. Marquette Fire Ins. Co. (1933), 351 Ill. 516, 525, 527.) Moreover, as indicated above, section 202 of the Insurance Code (Ill. Rev. Stat. 1979, ch. 73, par. 814), pro-

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vides that the compensation of such persons employed by the Director to assist him in the discharge of his duties pursuant to Article XIII as well as all expenses of taking possession of the property of the company and the administration thereof, as approved by the Director and subject to the approval of the court having jurisdiction over the delinquency proceedings, are paid from the assets of the subject company. Although section 202 also provides that in certain cases, the salary of the special deputy, together with the salaries of those clerks, assistants, or attorneys designated by the Director from those appointed by him under section 202, may be paid out of amounts appropriated to the Department of Insurance for personal services, the statute further provides that the amount paid out under this section from appropriated funds for salaries other than that of the special deputy, shall be repaid to the State treasury from any available funds or assets of the company, subject to the approval of the court. However, according to the Department of Insurance, this is a matter strictly within the discretion of the Director and it is only in very rare circumstances that the operations of the "Bureau of Liquidations" involve any use of public funds. Consequently, because the normal operations of the "Bureau of Liquidations" do not involve the receipt or expenditure of public funds, nor are its activities on behalf of the State, it appears that those operations are not required to be accounted for by the Department of Insurance or by the Comptroller in the manner prescribed by

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section 7 of the Comptroller Act. This conclusion of course does not in any way excuse the Department of Insurance, which is otherwise subject to section 7, from compliance with requirements of accounting in accordance with the Comptroller's uniform accounting system insofar as its operations involve public funds.

You have also inquired as to whether the "Bureau of Liquidations" is subject to the Illinois Purchasing Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.1 et seq.). Again, the determinative question, for the reasons discussed above, is not whether that administrative division is subject to the Act, but rather whether the Department of Insurance is subject to the Act.

Section 2 of the Illinois Purchasing Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.2) provides that:

"It is the purpose of this Act and is hereby declared to be the policy of the State that the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State Agency."
(Emphasis added.)

Section 3 of the Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.3) defines "State Agency" for the purposes of the Act to mean and include:

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* * * all officers, boards, commissions and agencies created by the Constitution, whether in the executive, legislative or judicial branch, but other than the circuit court; all officers, departments, boards, commissions, agencies, institutions,

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authorities, universities, bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; all administrative units and corporate outgrowths of the above and as may be created by executive order of the Governor.

* * *


(Emphasis added.)

As a department of the State, clearly the Department of Insurance is a "State Agency" within the meaning of the Illinois Purchasing Act. In addition "all administrative units" of departments of the State are specifically included in the definition of "State Agency" and are therefore subject to the Act by its own terms. Consequently, it appears that the Department of Insurance, Bureau of Liquidations, must comply with the provisions of the Illinois Purchasing Act. This conclusion is further supported by section 2 of the Act which, as indicated above, clearly provides that the Act shall apply "to all purchases and contracts by or for any State Agency". Because nothing in the Act limits its application to purchases or contracts by a State agency which involve the expenditure or use of public funds, the operations of the "Bureau of Liquidations" cannot be distinguished or exempted from application of the Act even though its normal course of operations does not involve the expenditure of public funds. Moreover, the Act, as it presently reads, was amended in 1973 (P.A. 78-944) to specifically delete the reference in the section 2 title and the section 3a definition of "State Agency" to the condition that a State agency expend State funds

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before the Act applies. Therefore, it is clear that the General Assembly intended that the Act apply to all purchases by all State agencies regardless of whether public funds are expended in order to promote the stated purpose of the Act which is to promote the policy of "competitive bidding and economical procurement practices". (Ill. Rev. Stat. 1979, ch. 127, par. 132.1.) Consequently, it is my opinion that the Department of Insurance, Bureau of Liquidations, is subject to the Illinois Purchasing Act.

Very truly yours,


ATTORNEY GENERAL