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June 23, 1972

FILE NO. S-484

**STATE OFFICERS:
Employment - Consumer Reports**

Honorable Forrest L. Tozer
Chairman
State Police Merit Board
Suite 1016 Ridgely Building
Springfield, Illinois 62701

Dear Mr. Tozer:

I have your recent letter which reads:

"As Chairman of the State Police Merit Board I am requesting that you furnish us an opinion as to whether or not, in view of the Fair Credit Reporting Act, Title 15 of the F.C.A., Sec. 1681, et seq, we can continue to make background investigations of State Police applicants, and, if so, what is our responsibility with respect to disclosing adverse information to the applicant.

"I am enclosing a photostatic copy of an investigation of an applicant whom we have rejected, having delineated information relative to his identity. The State Police Officers make background investigations for

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us and we get a similar type of report covering the same areas on all applicants whom we have approved on the basis of examinations and oral interviews.

"Would you also advise me whether the State Police, which is a separate branch of State Government from the State Police Merit Board, has any responsibilities or is in any way restricted when making inquiries at our request."

The powers of the State Police Merit Board in reviewing applications for the Illinois State Police are delineated in section 9 of An Act in relation to the State Police (Ill. Rev. Stat., 1971, ch. 121, par. 307.9) which reads, in part, as follows:

"The appointment of State policemen shall be made from those applicants who have been certified by the Board [State Police Merit Board] as being qualified for appointment.
* * * In addition, all persons so appointed shall be not more than the maximum age limit fixed by the Board from time to time, be of sound mind and body, be of good moral character, be citizens of the United States, have no criminal record, possess such prerequisites of training, education and experience as the Board may from time to time prescribe, and shall be required to pass successfully such mental and physical tests and examinations as may be prescribed by the Board. * * *"

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It is my understanding that the State Police Merit Board (hereinafter referred to as Board) conducts an initial interview with all Illinois State Police applicants. Those who merit further consideration, then, undergo a background investigation conducted by the Illinois State Police. The Illinois State Police collect and assemble into a report information about the applicant, including, but not limited to, credit information, past employment record, arrest record, and interviews with the applicants neighbors. The Board considers this report in an effort to decide whether to certify the applicant as being qualified for appointment to the Illinois State Police force. Of course, as pointed out in section 9, quoted above, the Superintendent of Police can only appoint applicants who have been certified by the Board as being qualified for appointment.

The following provisions of the Fair Credit Reporting Act (15 U.S.C.A., 1681 et seq. (1970)) are relevant to your inquiry:

"§1681. (b) It is the purpose of this subchapter to require that consumer reporting

agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter."

This provision makes it clear that the Act was intended to affect only "consumer reporting agencies."

"§1681a. (b) The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity."

"§1681a. (c) The term 'consumer' means an individual."

"§1681a. (d) The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b * * *."

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"§1681a. (f) The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

The issue then is whether the Illinois State Police, when it reports to the Board on an applicant's background, is a "consumer reporting agency." Section 1681s of the Fair Credit Reporting Act (15 U.S.C.A., 1681s (1970)) charges the Federal Trade Commission with enforcement of the Act. To date, no formal regulations interpreting section 1681a(f) have been promulgated by the FTC.

Of course, the Illinois State Police do not make these background reports for monetary fees or dues. Also, I am of the opinion that they do not engage in issuing their reports on a "cooperative nonprofit basis." I am of the opinion that "cooperative nonprofit basis" means a group of businessmen, employers, etc. who organize to exchange credit.

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employment, and other related information among themselves. Here, the Illinois State Police is merely supplying information to the Board. Thus, I am of the opinion that the Illinois State Police is not a consumer reporting agency as defined by section 1681a(f) of the Fair Credit Reporting Act (15 U.S.C.A., 1681a(f) (1970)). Because I am of the opinion that the Illinois State Police do not make their reports for monetary fees, dues, or on a cooperative nonprofit basis, I find it unnecessary to discuss whether or not the Board and the Illinois State Police are "persons" as defined by section 1681a(b).

Therefore, in answer to your first question, you may continue to authorize the Illinois State Police to make background investigations of Illinois State Police applicants. The disclosure provisions of the Fair Credit Reporting Act (15 U.S.C.A., 1681(d) and 1681(g) (1970)) do not apply to the Board. This is so because the disclosure provisions apply only to reports made by a consumer reporting agency and to information collected by a consumer reporting agency. The Illinois State Police is not a consumer reporting agency, thus, the disclosure provisions are inapplicable to the Board.

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In answer to your second question, the Illinois State Police do not have any responsibilities caused by the Fair Credit Reporting Act and are in no way restricted by said Act in making inquiries at the request of the Board. Again, this is so because the Illinois State Police is not a consumer reporting agency and the provisions of the Fair Credit Reporting Act only regulate the activities of consumer reporting agencies and those persons who receive or use reports from consumer reporting agencies.

Very truly yours,

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