



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

October 27, 1992

FILE NO. 92-024

STATE MATTERS:

Applicability of Drug Free
Workplace Act to Loan Recipients

Mr. Jan M. Grayson
Director
Illinois Department of Commerce
and Community Affairs
620 East Adams Street
Springfield, Illinois 62701

Attention: Thomas V. Gainer, General Counsel

Dear Mr. Grayson:

I have your letter wherein you inquire whether the Drug Free Workplace Act (Ill. Rev. Stat. 1991, ch. 127, par. 132.311 et seq.) is applicable to private entities having more than 25 employees to which the Department of Commerce and Community Affairs makes loans for economic development in excess of \$5,000. For the reasons hereinafter stated, it is my opinion that the Drug Free Workplace Act does not apply to the loans you have described.

Mr. Jan M. Grayson - 2.

You have stated that the Department of Commerce and Community Affairs, as part of its operations, makes loans to corporations, partnerships and sole proprietorships to assist their development. These loans are similar to commercial financing available from banks and other financial institutions, and are distinct from grants and contracts for the procurement of services, which are clearly covered by the Drug Free Workplace Act.

Section 2 of the Drug Free Workplace Act (Ill. Rev. Stat. 1991, ch. 127, par. 132.312) provides, in part:

"(a) 'Drug free workplace' means a site for the performance of work done in connection with a specific grant or contract of an entity whose employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act.

* * *

(g) 'Contractor' means a corporation, partnership, or other entity with 25 or more employees at the time of letting the contract, or a department, division, or unit thereof, directly responsible for the specific performance under a contract of \$5,000 or more. For purposes of this Act, 'contractor' does not include corporations, partnerships, or other entities that receive public funds in connection with * * * grants or loans made for the purpose of solid waste management or reduction.

* * *

Section 3 of the Act (Ill. Rev. Stat. 1991, ch. 127, par. 132.313) provides, in part:

"Contracts and grants. No grantee or contractor shall receive a grant or be considered

for the purposes of being awarded a contract for the procurement of any property or services from the State unless that grantee or contractor has certified to the granting or contracting agency that it will provide a drug free workplace * * *.

* * *

"

(Emphasis added.)

In interpreting a statute, the primary rule, to which all other rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature.

(Kraft, Inc. v. Edgar (1990), 138 Ill. 2d 178.) If the statutory language is clear, it must be given effect without resort to extrinsic aids for construction. In re Marriage of Logston (1984), 103 Ill. 2d 266.

Although section 2 of the Act defines "contractor", it does not define the term "contract". In section 3 of the Act, however, the term "contract" is specifically qualified by the language immediately following it, "for the procurement of any property or services". Thus, even though the term "contractor" is broadly defined, without limitation regarding the source or nature of any particular contract, the operative, prohibitory language in section 3 narrows the scope of the Act to apply only to contracts by the State for the procurement of property or services.

The only references in the Act to "loans" provide that an entity which receives a grant or a loan for solid waste management or reduction is not considered either a contractor or a

Mr. Jan M. Grayson - 4.

grantee to which the Act is applicable. (Ill. Rev. Stat. 1991, ch. 127, pars. 132.312(f),(g)). These provisions, however, are not relevant to the issue of whether a loan made by a State agency for any purpose other than solid waste management or reduction is to be considered a contract for the procurement of property or services under section 3.

Loans generally are contracts for the use of money. It is conceivable that some loans could relate to the procurement of property or services. The loans which you have described, however, are not contracts for the procurement of any property or services, but are intended to assist in economic development. It is my opinion that entities which receive economic development loans from the Department do not thereby become subject to the provisions of the Drug Free Workplace Act.

If the Department determines that the extension of the requirements of the Drug Free Workplace Act to loan recipients would serve the public interest, it could condition receipt of economic development loans upon the agreement of the recipient to comply with its provisions. A violation of those provisions could then serve as grounds to cancel or accelerate the loan agreement, or trigger such other sanctions as may be agreed upon in the loan instrument.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL