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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1082

CRIMINAL LAW:
Psychological Stress
Evaluator Unlawful
Under Illinois Law

Honorable Scott K. Wilzbach
State's Attorney
Marion County
Courthouse
Salem, Illinois 62851

Dear Mr. Wilzbach:

I have the request of your predecessor for my opinion as to whether a psychological stress evaluator (also known as a P.S.E.) may lawfully be used in Illinois to detect deception. You also ask if a person purporting to detect deception by means of a P.S.E. must be licensed under section 4 of "AN ACT to provide for licensing and regulating detection of deception examiners, etc." [hereinafter the Detection of Deception Examiners Act] (Ill. Rev. Stat. 1975, ch. 38, par. 202-4.)

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You advise that the P.S.E. uses only voice recordings as a means of detecting deception and does not record any other bodily functions.

In response to your first question, it is my opinion that the P.S.E. may not lawfully be used in Illinois. Section 3 of the Detection of Deception Examiners Act (Ill. Rev. Stat. 1975, ch. 38, par. 202-3) to which you refer provides in pertinent part:

"Every examiner shall use an instrument which records permanently and simultaneously the subject's cardio-vascular and respiratory patterns as minimum standards, but such an instrument may record additional physiological changes pertinent to the detection of deception.
* * *

The legislative command contained in this paragraph is clear and unambiguous. "Every examiner shall use an instrument which records * * * the subject's cardio-vascular and respiratory patterns as minimum standards * * * ". (emphasis added.)

The language of section 3 specifying the type of instrument to be used appears clearly to be mandatory rather than directory. As the court pointed out in People ex rel. Crowe v. Marshall, 262 Ill. App. 182, the legislature normally uses the word "shall" to convey a mandatory meaning, particu-

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larly where the public interest is involved. The General Assembly has stated explicitly in section 2 of the Detection of Deception Examiners Act (Ill. Rev. Stat. 1975, ch. 38, par. 202-2) that the control and regulation of deception detection is "in the public interest".

Since the psychological stress evaluator does not record the minimum physiological indicators required by section 3 of the Act, it may not, in my opinion, be used by detection of deception examiners in Illinois.

Your second question concerns that portion of section 4 of the Detection of Deception Examiners Act (Ill. Rev. Stat. 1975, ch. 38, par. 202-4) which states:

"It is unlawful for any person to administer detection of deception examinations, or attempt to hold himself out as an Examiner, without a license issued by the Department, except insofar as qualified by Sections 5 and 12 of this Act.
* * * "

You ask whether a person who purports to detect deception by means of a P.S.E. must be licensed under section 4. It is clear from section 4 that no one may administer detection of deception examinations in Illinois by any means without a license issued by the Department of Registration and Education of the State of Illinois. In my opinion, therefore, the answer to your second question is that no one may

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hold himself out as an examiner or administer detection of deception examinations without a license; and no licensee may use the psychological stress evaluator.

Very truly yours,

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