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FILE NO. S-489

LABOR:
Factory Inspections

Director Barney J. Grabiec
Department of Labor
160 North La Salle Street
Chicago, Illinois 60601

Dear Mr. Grabiec:

We have received your letter wherein you state:

"The Illinois Department of Labor and the Illinois Industrial Commission have been charged by Governor Richard B. Ogilvie with the responsibility of preparing an Illinois state plan for the promulgation and enforcement of occupational safety and health standards for approval of the U. S. Secretary of Labor under the Federal Occupational Safety and Health Act of 1970. In the absence of such an approved state plan the Federal Act will preempt state and local authority in the administration of occupational safety and health standards.

To be approved such a state plan must contain "satisfactory

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assurances that the state will, to the extent permitted by its law" enforce occupational safety and health standards over employees of political subdivisions of the state. It has been determined that approval of such a state plan cannot be withheld for failure of the plan to cover the employees of political subdivisions of the state if current state law does not provide for the enforcement of occupational safety and health standards by the state over such employees of political subdivisions.

The major legislative vehicles to be used in the Illinois OSHA state plan will be the Illinois Health and Safety Act and the Safety Inspections and Education in Industrial and Commercial Establishments Act. As this matter is vital to the preparation of a state plan which will affect the working lives of millions of our citizens we would greatly appreciate your prompt determination of an official opinion as to whether or not state law provides for state enforcement of standards to ensure the occupational safety and health of employees of political subdivisions of the State of Illinois."

In my opinion Illinois laws do not provide for state enforcement of occupational safety and health standards against political subdivisions.

Section 2 of the Health and Safety Act, (Ill. Rev. Stat. 1971, Ch. 48, par. 137.2 et seq.), is the product of amendment by P.A. 77-1644 eff. September 24, 1971. Section 2 of that Act, as

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to the pertinent amendment, reads:

"Sec. 2. This Act shall apply to all employers engaged in any occupation, business or enterprise in this State, and their employees, including the State of Illinois and its employees." (amendment underlined)

Prior to this amendment, the Health and Safety Act had never been construed to apply to the State of Illinois and its employees. As has been stated, ". . .the Health and Safety Act does not apply to the state though it is said that the state is held in principle to the same standards applicable to other employers under the Act." Craven v. State of Illinois, 24 Ct. Cl. 158.

Without more specific evidence of such legislative intent, it is my opinion the term "the State of Illinois and its employees" cannot be construed to embrace the State's political subdivisions, as is true under The Workmens' Compensation Act, (Ill. Rev. Stats. 1971, Ch. 48, par. 138.1 et seq.), which specifically includes political subdivisions by definition under Section 1 of that Act. Such a broad interpretation cannot be extended to the term "State

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of Illinois and its employees" as added to said Section 2 of the Health and Safety Act.

Further, the Federal Occupational Safety and Health Act of 1970, (P.L. 91-596, Section 18(c)(6), Dec. 29, 1970, 84 Stat. 1590.), provides that in any plan submitted by a state desiring to assume responsibility for occupational safety and health standards, the state must submit a plan which ". . .contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan. . .".

One criterion for an effective plan is to ". . .provide for the right of entry and inspection of all work places. . .". (Sec. 18(c)(3) of the Occupational Safety and Health Act of 1970.) The enforcement provisions of "AN ACT in relation to safety inspections and education in industrial and commercial establishments, etc.",

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(Ill. Rev. Stats. 1971, Ch. 48, par. 59.1 et seq., as amended by P.A. 77-1801.), provides under Section 2, that ". . .The Department, through the employees of the Division shall ~~(a)~~ enforce the rules promulgated under the Illinois Health and Safety Act, and any occupational health and safety laws relating to inspection of places of employment, and ~~(b)~~ shall visit and inspect, as often as practicable, the places of employment covered by this Act."

(emphasis added).

This latter Act has never been held applicable to either the State of Illinois or any of its political subdivisions. There is no doubt that according to Section 17 of the Health and Safety Act, (Ill. Rev. Stats. 1971, Ch. 48, par. 137.17.), the Illinois Industrial Commission may by appropriate rule and regulation empower the Department of Labor to enforce the provisions of the said Act. However, it cannot confer jurisdiction it does not itself possess. To hold that the Department of Labor has the right of inspection in places of employment of political subdivisions of the state, not

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only must Section 2 of "AN ACT in relation to safety inspections and education in industrial and commercial establishments, etc.", (Ill. Rev. Stats. 1971, Ch. 48, par. 59.2), be construed in pari materia with Section 2 of the Health and Safety Act (Ill. Rev. Stats. 1971, Ch. 48, par. 137.2), but also the phrase the ". . . State of Illinois and its employees. . ." must be extended by implication to include political subdivisions. Such a construction is, at best, strained.

For the purposes of this opinion, the state law as now enacted has been construed and consideration has not been given to the possibility of further legislation on the subject since it is understood that the question as posed involved only current state statutes. Further note should be taken that the possibility of the federal government in contracting with various state agencies and imposing their restrictions as to occupational health and safety, has not been considered, as that too is not part of the opinion request as submitted.

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In answer to your question, it is my opinion that as the state law stands, political subdivisions of the state are not provided coverage by our Health and Safety Act.

Very truly yours,

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