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REGULATED INDUSTRIES:

Illinois Commerce Commission's
Authority to Regulate an Intra-
State Radio Communication Service
Providing Two-Way Radiophone
Communication or a Paging Service
as a Public Utility.

Marvin S. Lieberman, Chairman
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62706

Dear Mr. Lieberman:

I have your letter wherein you ask whether an
intra-state radio communication service providing two-way
radiophone communication or a paging service is subject
to regulation by the Illinois Commerce Commission as a
public utility. You indicate:

Marvin S. Lieberman - 2.

" * * *

Historically, and to the present, this Commission has regulated only those radio communication services which are interconnected to telephone lines, either from an automobile transmitter or from a fixed base receiving station.

* * *

* * * [B]ut does not regulate those message and paging services which operate exclusively by radio waves * * *."

Section 10.3 of "AN ACT concerning public utilities", [Public Utilities Act] (Ill. Rev. Stat. 1975, ch. 111 2/3, par. 10.3) defines public utility, in relevant part, as follows:

"§ 10.3 'Public utility' means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their leases, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

* * *

b. the transmission of telegraph or telephone messages between points within this State;

* * *

Subsection b is the only portion of section 10.3 which could possibly be considered applicable to an intra-state radio

Marvin S. Lieberman - 3.

communication service providing two-way radiophone communication or a paging service.

In Ill.-Ind. Cable T.V. Ass'n. v. Comm. Com., 55 Ill. 2d 205, the Illinois Supreme Court had occasion to determine whether cable television is a public utility subject to the jurisdiction of the Illinois Commerce Commission. There, the Commission had concluded that cable television was a public utility within the definition of section 10-3(b) of the Public Utilities Act. The court began at 207 by emphasizing:

"The Illinois Commerce Commission has only that jurisdiction conferred upon it by the legislature * * * It may not extend its jurisdiction, that being a prerogative of the legislature. Thus, if cable television is not within the statutory definition of a public utility, the Commission is without power to assume jurisdiction over such services."

Regarding the statutory language of section 10.3(b), the court said, at 209:

"The statutory interpretation of the meaning of the terms 'telegraph or telephone messages' is a question of law for determination by the courts."

Marvin S. Lieberman - 4.

The Court cited Television Transmission v. Public Utilities Comm'n. (Cal., 1956), 301 P. 2d 862, 864, in which the California Supreme Court stated:

"In common understanding telephone, telegraph, radio, and television corporations are each different from the other, and until the Legislature otherwise provides we must so regard them."

In holding that cable television does not fit the statutory definition of a public utility, the Illinois Supreme Court stated, at 220:

"We are compelled to the conclusion that the words 'telephone service' should be given their plain and commonly ascribed meanings as used in the Public Utilities Act."

Therefore, in my opinion, an intrastate radio communication service providing two-way radiophone communication or a paging service is not subject to regulation by the Illinois Commerce Commission, because the definition of public utility found in section 10.3(b) of the Illinois Public Utilities Act is not applicable to those services whose messages are transmitted solely by radio waves.

Very truly yours,

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