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STATE OF ILLINOIS

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FILE NO. 92-025

MUNICIPALITIES:
Extent of Auxiliary
Police Officer's Duties

Honorable Craig H. DeArmond
State's Attorney, Vermilion County
Vermilion County Courthouse
7 North Vermilion Street
Danville, Illinois 61832

Dear Mr. DeArmond:

I have your letter wherein you inquire whether, under section 3-6-5 of the Illinois Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 3-6-5), an auxiliary police officer may be assigned to perform normal and regular police duties whenever it is deemed necessary by the chief of police, or only in circumstances which involve a disaster or civil disorder. For the reasons hereinafter stated, it is my opinion that an auxiliary police officer may be assigned, temporarily, to perform any law enforcement activity which is ordinarily performed by a municipal police officer whenever it is impractical for a member of the regular police force to act.

Section 3-6-5 of the Illinois Municipal Code, which governs the appointment, qualifications and duties of auxiliary police officers, provides, in pertinent part:

"The mayor or village president of any municipality in Illinois may, with the advice and consent of the corporate authorities, appoint auxiliary policemen in such number as the corporate authorities shall from time to time deem necessary. Such auxiliary policemen shall not be members of the regular police department of the municipality. Such auxiliary policemen shall not supplement members of the regular police department of any municipality in the performance of their assigned and normal duties, except as otherwise provided herein. Such auxiliary police members shall only be assigned to perform the following duties in a municipality: To aid or direct traffic within the municipality, to aid in control of natural or man made disasters, to aid in case of civil disorder as directed by the Chief of Police, provided, that in cases which render it impractical for members of the regular police department to perform the normal and regular police duties, the Chief of Police of the regular police department is hereby authorized to assign auxiliary policemen to perform such normal and regular police duties. Identification symbols worn by such auxiliary policemen shall be different and distinct from those used by members of the regular police department. Such auxiliary policemen shall at all times during the performance of their duties be subject to the direction and control of the Chief of Police of the municipality. Such auxiliary police officers shall not carry firearms, except with the permission of the Chief of Police, and while in uniform and in the performance of their duties. Such auxiliary police when on duty shall also be conservators of the peace and shall have the powers as specified in Section 3-9-4 of this Code.

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(Emphasis added.)

Under the language quoted above, a city has been authorized to assign auxiliary police to direct traffic in a municipality and to aid the regular police in the control of disasters and in cases of civil disorders. Auxiliary police officers are not authorized generally to perform normal and regular police duties. That limitation, however, is modified by the proviso clause in section 3-6-5, which provides that auxiliary policemen may be assigned normal and regular police duties when circumstances render it "impractical" for members of the regular police force to perform those duties. The proviso clause is neither expressly nor impliedly conditioned upon the existence of a disaster or civil disorder.

The issue of the scope of duties of auxiliary policemen was discussed in Wantroba v. Rusch (1977), 55 Ill. App. 3d 523, in which the court was asked to determine whether the plaintiff was a regular police officer who was entitled to a hearing prior to discharge or removal, or an auxiliary policeman who was afforded no such rights. In reaching its conclusion that the plaintiff was an auxiliary policeman, the court noted, at page 527:

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* * *

* * * The defendant [sic - plaintiff] stresses in his argument that he received the trappings of his office such as a gun, mace, and use of a village police vehicle, and that he performed all police functions including making arrests and conducting investigations. Municipal Code section

3-6-5 specifically provides that the chief of police is authorized to assign an auxiliary policeman to perform normal and regular police duties where it is impractical for members of the regular police department to perform those duties. The statute also provides that auxiliary policemen when on duty shall also be conservators of the peace with the duties that were enumerated earlier in this opinion.

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Although the court did not define the phrase "normal and regular police duties", it is apparent, from the facts of the case, that this phrase was considered to extend to all phases of law enforcement activity ordinarily performed by municipal police officers, including the investigation of criminal activity and the arrest of those who violate the law. Further, it is evident that the court did not treat section 3-6-5 as limiting the assignment of additional duties to an auxiliary police officer to circumstances which concern disaster or civil disorder. Therefore, based upon the language of section 3-6-5, as discussed in Wantroba v. Rusch, it is my opinion that when circumstances render it impractical for members of the regular police department to perform a duty or otherwise to act, auxiliary police officers may be assigned in their stead.

This conclusion necessarily raises the ancillary issue of what constitutes a situation in which it is impractical for a regular police officer to perform normal police functions. Although the term "impractical" is not defined in the Act, a

statutory term which is not defined will be given its ordinary and popularly-understood meaning. Union Electric Co. v. Department of Revenue (1990), 136 Ill. 2d 385, 397.

In Webster's Third New International Dictionary 1136 (1981), the word "impractical" is defined as being synonymous with "impracticable", meaning: "* * * incapable of being put into use or effect or of being accomplished or done successfully or without extreme trouble, hardship, or expense * * *". Moreover, in interpreting the terms "impractical" and "impracticable", the courts have consistently found that the terms do not mean "impossible". Planned Parenthood Association of Cincinnati v. Project Jericho (S.Ct. Ohio 1990), 556 N.E.2d 157, 165; LaCourse v. City of St. Paul (S.Ct. Minn. 1972), 200 N.W.2d 905, 909; Chevron U.S.A. Inc. v. Kennedy (Tex. Ct. App. 1991), 808 S.W.2d 159, 161.

Given the commonly understood meaning of the term "impractical", it is my opinion that if a police department lacks sufficient manpower, for any reason, to perform its ordinary functions, then such circumstances render it "impractical" for the members of the regular police department to perform their regular and normal duties, for purposes of section 3-6-5 of the Code. The lack of sufficient manpower could be the result of illness or absence due to court appearances, for example, or simply due to the fact that insufficient numbers of regular

police officers are currently available to handle the number of incidents requiring police intervention. Consequently, it is my opinion that a chief of police may properly assign auxiliary police officers to perform regular police duties temporarily in such circumstances, including, inter alia, arresting or causing to be arrested all persons who breach the peace or violate any municipal ordinance or criminal law of the State.

I must stress, however, that the authority to use auxiliary police officers to perform general police duties is limited to exigent circumstances in which regular police officers are temporarily unavailable. It is the clear intent of section 3-6-5 of the Illinois Municipal Code to insure that auxiliary police officers are not employed to replace members of the regular police force, or to perform general police duties, on a regular basis. Thus, the appointment and utilization of auxiliary police officers is not a permissible alternative to the maintenance of an appropriately-staffed regular police force, and may not be used as a mechanism to avoid the duty to maintain such a force.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL