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SPRINGFIELD

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LICENSED OCCUPATIONS:
Probable Cause Not Required
For Warrantless Search of
Licensed Premises Pursuant
to Statutory Provisions of
Liquor Control Act.

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Honorable Stephen Landuyt
State's Attorney
Henderson County
Oquawka, Illinois 61469

Dear Mr. Landuyt:

I have your letter wherein you request my opinion on the following question:

> How much probable cause, if any, do law enforcement officials need before they can conduct a warrantless search pursuant to section 8 of article X of "AN ACT relating to alcoholic liquors"? (Ill. Rev. Stat. 1976 Supp., ch. 43, par. 190.)

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After consideration of pertinent statutes and case law it is my conclusion that no probable cause is required for a warrantless search pursuant to section 8 of article X of the above cited Act. This section provides in pertinent part that:

> " * * * [N]o search warrant shall be necessary for the inspection or search of any premises licensed under this Act * * * ."

Section 3(2) of the Liquor Control Act (Ill. Rev. Stat. 1975, ch. 43, par. 112(2)) provides that each local liquor commissioner has the power:

> "2. To enter or to authorize any law enforcing officer to enter at any time upon any premises licensed hereunder to determine whether any of the provisions of this Act or any rules or regulations adopted by him or by the State Commission have been or are being violated, and at such time to examine said premises of said licensee in connection therewith * * * ."

Further, section 1 of the Liquor Control Act (Ill. Rev. Stat. 1975, ch. 43, par. 94) requires that:

> "This Act shall be liberally construed, to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors."

It is recognized that the States have a strong base of authority from which to regulate the liquor trade.

(U.S. Const., amend. XXI, sec. 2; California v. LaRue (1972), 409 U.S. 109, 114.) The Supreme Court of Illinois has firmly asserted that the right of engaging in the liquor business is not inherent, and since this particular industry has a high potential for criminal activity, State regulation under its police power is permissible. (Daley v. Berzanskis (1971), 47 Ill. 2d 395, 398-399; cert. den, 402 U.S. 999.) Such State regulation is very broad, has a firm historical base in governmental regulation of the liquor industry, and in certain instances will take precedence over fourth amendment rights protecting citizens against unreasonable searches and seizures. Occhino v. Illinois Liquor Control Comm. (1975), 28 Ill. App. 3d 967, 969; Colonnade Catering v. United States (1970), 397 U.S. 72, 76-77; Boyd v. United States (1886), 116 U.S. 616.

In Daley v. Berzanskis the Supreme Court of Illinois recognized the special nature of the liquor industry and upheld the warrantless search of licensed premises pursuant to statute. Evidence seized and utilized for the limited purpose of a license revocation proceeding was not suppressed for lack of a valid search warrant. (Berzanskis at 719-720.)

It was stated that since a licensee is engaging in a regulated industry the State could prohibit if it so desired, then "any restriction or requirement such as consent to a warrantless search, which is necessary to protect public health, safety and morals, is a reasonable exercise of the police power of the State". Berzanskis at 719.

In Colonnade Catering v. United States, the United States Supreme Court approved warrantless inspections of commercial establishments engaged in the liquor trade. Mr. Justice Douglas stated in the majority opinion that "Congress has broad power to design such powers of inspection under the liquor laws as it determines necessary to meet the evils at hand". (Colonnade Catering at 776-777.) This power has also been extended to State regulations, particularly in light of the twenty-first amendment's grant of regulatory power over the liquor trade. California v. LaRue.

Since warrantless searches are clearly a special method of enforcing limited inspection laws, and as such are considered reasonable under fourth amendment standards (Colonnade Catering at 776-777; Boyd v. United States (1886), 116 U.S. at 623-624), the fourth amendment requirement that a warrantless search be supported by probable cause is not

extended in this situation. (See Almeida-Sanchez v. United States (1973), 413 U.S. 266, 289-290, 290 n. 5 (White J., dissenting) "The Fourth Amendment imposes no irreducible requirement of [some quantum of individualized suspicion]". United States v. Martinez-Fuerte (1975), _____ U.S. _____, 96 S. Ct. 3074, 3084. Compare Camara v. Municipal Court (1967), 387 U.S. 523, 538-539, and See v. City of Seattle (1967), 387 U.S. 541, 545-546 with Colonnade Catering, 397 U.S. at 73-77 and Almeida-Sanchez, 413 U.S. at 289-290.

Thus, since cited provisions of the Illinois Liquor Control Act permit the authorized warrantless search of any premises licensed under the Act for the limited purpose of determing whether any liquor law violations have occurred, it is my opinion that such provisions represent a well-established exercise of the State's police power requiring no quantum of probable cause for constitutionally acceptable implementation.

Very truly yours,

ATTORNEY GENERAL