



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FINANCE:
Department of General Services
Insurance - Motor Vehicles

Honorable David J. Regner
State Representative
Chairman State Property
Insurance Study Commission
300 West Golf Road
Mt. Prospect, Illinois 60056

Dear Representative Regner:

I have your letter of January 31, 1972, concerning the scope of Public Act 77-472 which was passed by the 77th General Assembly and signed by the Governor on July 27, 1971. This Bill amends a section of The Illinois Vehicle Code which allows governmental bodies and requires government employees to acquire public liability insurance. Ill. Rev. Stat. 1971, ch. 95 1/2, par. 10-101.

In an opinion of this office dated January 20, 1971, S-254, 1971 Attorney General's Opinions _____, I discussed the coverage of this section. I there concluded that all

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State Departments under the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1971, ch. 127, par. 1 et seq.) must acquire the public liability insurance authorized by this section through the Department of General Services but that other State bodies were authorized, but not required, to purchase public liability insurance in this manner. I am attaching a copy of that opinion for your examination.

Subsequently the General Assembly passed, and the Governor approved, a Bill (H. B. 1833, P. A. 77-472) which amends section 10-101 to provide:

"Sec. 10-101. Insurance. (a) Any public entity or corporation may insure against the liability imposed by law in any insurance carrier duly authorized to transact business in this State and the premium for such insurance shall be a proper charge against the general fund or any applicable special fund of such entity or corporation.

"(b) Every employee of the State, who operates a vehicle owned by the State or licensed by the State for the use of the State over and upon the public highways of this State, shall procure, or the State may furnish without cost to the employee insurance in the limit of the

amounts of liability not less than the amounts required in Section 7-203 of this Act. Any public liability insurance furnished by the State under this Section shall be under the policy or policies contracted for by the Department of General Services pursuant to Section 67.16 of 'The Civil Administrative Code of Illinois', the costs for procuring such insurance to be charged, collected and received as provided in that Section 67.16." (New language emphasized)

House Bill 1833 also deleted language which read:

" * * * The premium for such insurance shall be a proper charge against the general fund of the State or any applicable special fund."

Section 10-101 was also amended by P. A. 77-473 which adds the authorization for the State to acquire uninsured motorist coverage for their employees. As both amendments are harmonious and consistent, both amendments are to be given full effect.

S. Buchsbaum and Co. vs. Gordon, 389 Ill. 493.

The new language of Section 10-101 requires that the Department of General Services act as a central purchasing agent for public liability insurance acquired by the State. The Department is required to contract for the insurance by

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means of open bidding. This amendment expands the power of the Department of General Services and renders inapplicable those portions of my earlier opinion which dealt with other State bodies not created by the Civil Administrative Code of Illinois.

Your letter raises two questions: Is Eastern Illinois University covered by the provisions of Section 10-101 as amended? If Eastern Illinois University purchases insurance in contravention of that section, could the insurer escape liability by alleging that the policy was contracted for in violation of State law?

Subparagraph (b) of Section 10-101 applies to any State employee who drives a State owned vehicle or vehicle licensed for use of the State. All insurance authorized by this Section must be purchased through the Department of General Services. The Department is authorized to perform this function under Section 67.15 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1971, ch. 127, par. 63b13.16) which provides:

"To charge, collect and receive from all other agencies of the State government fees or monies equivalent to the

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costs of purchasing public liability insurance covering drivers of motor vehicles owned or controlled by the State of Illinois, and repairing, servicing, and maintaining the motor vehicles used by such other agencies under Section 67.15 of this Act. All contracts let under the provisions of this Act shall be by bid in accordance with the procedure set forth in the Illinois Purchasing Act."

Eastern Illinois University is a member of the system of State colleges and universities and is administered by the Board of Governors of State Colleges and Universities (hereafter Board) (Ill. Rev. Stat. 1971, ch. 144, par. 1001). The Board is a body corporate and politic (Ill. Rev. Stat. 1971, ch. 144, par. 1007) which is responsible for the expenditure of funds appropriated to colleges and universities under its jurisdiction. The Board is charged with employing such persons as are necessary to perform the function assigned to it. (Ill. Rev. Stat. 1971, ch. 144, par. 1008.) These persons are paid with State funds from the State treasury pursuant to an appropriation made by the General Assembly. Employees

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of the Board are treated as State employees for many purposes: State Universities Retirement System (Ill. Rev. Stat. 1971, ch. 108 1/2, par. 15-106 and 15-107); "An Act requiring the submission of lists of employees of all State Officers including the University of Illinois, Southern Illinois University, the Regency Universities and the State Colleges and Universities under the jurisdiction of the Board of Governors of State Colleges and Universities, and a compilation of a list thereof for public inspection" (Ill. Rev. Stat. 1971, ch. 127, par. 168b); "An Act in relation to a system of unemployment compensation" (Ill. Rev. Stat. 1971, ch. 48, par. 314); Workmen's Compensation Act (Ill. Rev. Stat. 1971, ch. 48, par. 138.1). In People vs. Barrett, 382 Ill. 321, 340, the Illinois Supreme Court, while recognizing that the University of Illinois has special status, being a body corporate and politic, holds that the university employees are employees of the State. For these reasons the employees of Eastern Illinois University must be considered State employees for the purposes of Section 10-101.

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Motor vehicles assigned to universities controlled by the Board are licensed as State vehicles pursuant to The Illinois Vehicle Code (Ill. Rev. Stat. 1971, ch. 95 1/2, par. 3-808, sub 8b) and are identified as State owned pursuant to "An Act relating to identification and use of motor vehicles of the State" (Ill. Rev. Stat. 1971, ch. 127, pars. 133e1 to 133e4 inclusive). An employee of Eastern Illinois University driving a vehicle owned by the University, would be a State employee operating a State owned motor vehicle or a vehicle licensed for the use of the State.

Therefore, in answer to your first question, it is my opinion that Eastern Illinois University is subject to the provisions of Section 10-101 and is required to obtain any public liability insurance authorized by that section through the Department of General Services.

Under Illinois law, a contract which itself is expressly prohibited by statute is void. (DeKam vs. City of Streator, 316 Ill. 123) A contract not expressly prohibited

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but in violation of statute may be held void if the legislature intended to declare the conduct unlawful. (Duck Island Hunting and Fishing Club vs. Edward Gillen Dock, Dredge and Construction Company, 330 Ill. 121.) This rule is adopted to prevent the frustration of a legislative policy expressed by statute. However, the court may enforce a contract tainted by illegality where enforcement will advance the purposes of the statute. (Central Republic Trust Company vs. Evans, 378 Ill. 58.) Meyer vs. Buckman, 7 Ill. App.2d 385, provides a recent discussion of the principle of illegality. A contract should only be held void where the court, after considering all of the factors, determines that this action will advance the legislative purpose. If the public interest is best served by enforcing the contract it will be upheld.

A public liability insurance contract for State drivers is not expressly prohibited by Section 10-101. However, if this insurance is not purchased through the Department of General Services, it would violate the provision

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requiring central purchasing. Thus, under the principles discussed above an answer to your second question requires a determination of the legislative intent of Section 10-101. The principal purpose of this Section is to protect the public by assuring that negligent State drivers will be accountable in Illinois courts. State drivers are required to obtain public liability insurance. The new amendment sets forth a uniform means for purchasing this insurance. Its purpose is to promote efficiency and economy by providing for central purchasing of the liability insurance. The central purpose of the statute was to require that the public liability insurance be obtained. The means set forth under the new amendment are merely incidental to the accomplishment of this purpose. Although a contract made in violation of the central purchasing requirement would frustrate the legislative desire to consolidate insurance purchases, the public would still be provided with the protection intended by this section. As a decision invalidating an insurance contract not purchased through the Department of General Services

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would deny the public the protection which Section 10-101 was intended to provide, the Illinois courts would reject the defense of illegality.

Therefore, it is my opinion that an insurance company could not escape liability under a public liability insurance policy even if the policy were obtained in violation of the central purchasing provisions of Section 10-101.

Yours very truly,

ATTORNEY GENERAL

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