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FILE NO. S-907

INSURANCE:
Authority of the Department
of Insurance to Prohibit
Discrimination in Employment

Robert B. Wilcox, Director
Department of Insurance
State of Illinois
Springfield, Illinois 62767

Dear Mr. Wilcox:

This responds to your request for an opinion as to whether the Department of Insurance has authority to prohibit discrimination in employment on the grounds of race, creed, color or sex on the part of insurance companies, agents and brokers doing business in this State. It is my opinion that such authority lies with the Fair Employment Practices Commission rather than the Department of Insurance.

It has long been recognized in Illinois that the powers of the Department of Insurance are limited. As stated in the case of Central Standard Life Ins. Co. v. Gardner, 19 Ill. App. 2d 431, 434:

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"In considering the (Department's) power, it must be remembered that the business of life insurance has always been subject to a great deal of government regulation because of the public interest involved. The state usually controls this business through the exercise of its police power. *People ex rel. American Bankers Ins. Co. v. Palmer*, 363 Ill. 499, 2 N.E.2d 728, 106 A.L.R. 447. The Illinois statutes provide that the Director of Insurance has the power to enforce and execute all the insurance laws of the state as well as the power to make reasonable rules and regulations for the enforcement of such laws. Ill. Rev. Stat. 1957 (1973), ch. 73, §1013. While the powers and duties of the Director are partly administrative or ministerial and partly discretionary or quasi-judicial, *Burton v. Aetna Life Ins. Co.*, 229 Ill.App. 517, his powers under the Code are regulatory and not legislative. *People ex rel. Barber v. Hargreaves*, 303 Ill.App. 387, 25 N.E. 2d 416."

The Director of the Department of Insurance may exercise only those powers given him by the legislature. National Auto. Underwriters Ass'n. v. Day, 348 Ill. App. 554.

These powers are set forth in the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1973, ch. 127, pars. 1 et seq.) and the Illinois Insurance Code. (Ill. Rev. Stat. 1973, ch. 73, pars. 613 et seq.) Section 56 of the Civil Administrative Code (Ill. Rev. Stat. 1973, ch. 127, par. 56) provides as follows:

§ 56. The Department of Insurance shall have power:

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1. To exercise the rights, powers and duties vested by law in the insurance superintendent, his officers and employes;

2. To exercise the rights, powers and duties which have been vested by law in the Department of Trade and Commerce as the successor of the insurance superintendent, his officers and employes;

3. To exercise the rights, powers and duties heretofore vested by law in the Department of Trade and Commerce, or in the Director of Trade and Commerce, by:

(a) All laws in relation to insurance;

(b) 'An Act empowering the Director of Trade and Commerce to examine and report upon certain benefit funds,' approved July 6, 1927;

4. To execute and administer all laws heretofore or hereafter enacted, relating to insurance.

* * *

Section 401 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73, par. 1013) provides as follows:

"§ 401. General Powers of the Director.)

The Director is charged with the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of this State. He shall have the power

(a) to make reasonable rules and regulations as may be necessary for making effective such laws;

(b) to conduct such investigations as may be necessary to determine whether any person has violated any provision of such insurance laws;

(c) to conduct such examinations, investigations and hearings in addition to those specifically provided for, as may be necessary and proper for the efficient administration of the insurance laws of this State; and

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(d) to institute such actions or other lawful proceedings as he may deem necessary for the enforcement of the Illinois Insurance Code or of any Order or action made or taken by him under this Code. The Attorney General, upon request of the Director, may proceed in the courts of this State to enforce an Order or decision in any court proceeding or in any administrative proceeding before the Director."

The authority set forth in these provisions deals only with insurance laws.

You have noted in your letter that "no Illinois or Federal statutory or constitutional provision contains language suggesting that the Department's authority goes so far [as to prohibit discrimination in employment]". I have examined the Illinois Insurance Code, supra, and other provisions dealing with the regulation of the insurance business in Illinois (Ill. Rev. Stat. 1973, ch. 73, pars. 204.1 through 204.25; 478 through 487), and have found no such provision either. The only provision directly dealing with discrimination because of race, color, religion or national origin is found in section 424 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73, par. 1031), and it prohibits such discrimination only in regard to insurance risks and applicants for insurance. Section 502 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73,

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par. 1065.49) lists the grounds for refusing or revoking a license of an agent or broker. While it lists twelve grounds for revoking or refusing to issue a license, none of those reasons include discrimination in hiring.

While section 132 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73, par. 744) contains broad language which authorizes the Director of the Department to investigate the affairs and operations of any insurance company and to determine if the company is operating in violation of any law, such provision should be read in the context of the purpose of the Department, which is to regulate insurance companies for the protection of its policy holders, creditors and the public from practices which would endanger the financial stability of insurance companies. All examinations conducted pursuant to section 132, supra, are subject to a hearing and review. Section 401.1 of the Illinois Insurance Code (Ill. Rev. Stat. 1973, ch. 73, par. 1013.1) specifically limits the area in which the Director can act. It provides in part as follows:

“§ 401.1 (1) This Section applies to all companies and persons subject to examination by the Director, or purporting to do insurance business in this State, or in the process of organization with intent to do such business therein, or for whom a Certificate of Authority

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is required for the transaction of business, or whose Certificate of Authority is revoked or suspended.

(2) Whenever it appears to the Director that any person or company subject to this Code is conducting its business and affairs in such a manner as to threaten to render it insolvent, or that it is in a hazardous condition, or is conducting its business and affairs in a manner which is hazardous to its policyholders, creditors or the public, or that it has committed or engaged in, or is committing or engaging in, any unlawful act, or any act, practice or transaction which under any provision of this Code would constitute ground rendering the person subject to conservation, liquidation or rehabilitation proceedings and that irreparable loss and injury to the property and business of a person or company has occurred or may occur unless the Director acts immediately, the Director may, without notice, and before hearing, issue and cause to be served upon such person or company an order requiring such person or company to forthwith cease and desist from engaging further in the acts, practices or transactions which are causing such conduct, condition or ground to exist.

* * *

It is therefore my opinion that the Department of Insurance does not have the authority to prohibit discrimination in employment.

The subject of discrimination in employment in Illinois is dealt with in the Fair Employment Practices Act. (Ill. Rev. Stat. 1973, ch. 48, pars. 851 - 867.) This Act, adopted pursuant to section 17 of article I of the Illinois

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Constitution of 1970, defines and prohibits unfair employment practices, which includes discrimination in employment because of the race, color, religion, sex, national origin or ancestry of an individual. It also provides a comprehensive system for dealing with allegations of discriminatory employment practices and creates the Fair Employment Practices Commission. It is this Commission which enforces the Act.

An interpretation of the authority of the Department of Insurance to include the prohibition of discrimination would subject insurance companies, agents and brokers to the jurisdiction of two different enforcement agencies, which could have different standards, rules, regulations and procedures in regard to the same subject matter. This would put an undue burden on the companies, agents and brokers. Concurrent jurisdiction by two different agencies of the same subject matter is not favored. In Long Island College Hospital v. Catherwood, 241 N.E. 2d 892 (1968) the Court of Appeals of New York stated at page 897:

"There have been occasions where the Legislature has granted two administrative agencies concurrent jurisdiction to determine the same issue, but the wisdom of such a grant of power is highly questionable, involving as it may, duplicative proceedings and delays in decision making. We should not,

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therefore, be astute to find the existence of concurrent jurisdiction unless no other reading of the statute is possible."

Although your Department does not have authority to prohibit discrimination in employment, this would not prohibit you from notifying either the Fair Employment Practices Commission or other appropriate authorities if you become aware of such discriminatory practices by an insurance company or agents and brokers, subject to the confidentiality of certain information and documents as set forth in section 131.22 of the Illinois Insurance Code. Ill. Rev. Stat. 1973, ch. 73, par. 743.22.

Very truly yours,

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