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MOTOR VEHICLES:
Applicability of Municipal
Parking Ordinance to State

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Department of Administrative Services
716 Stratton Office Building
Springfield, Illinois 62786

Honorable Roland W. Burris
Comptroller
State of Illinois
Springfield, Illinois 62705

Gentlemen:

This is in reply to your letter wherein you asked a number of questions pertaining to the liability of the State for traffic tickets received for violation of local parking ordinances.

Firstly, you inquire as to whether a unit of local government may ticket a State mail and messenger vehicle for violation of a local parking ordinance when that vehicle is delivering and picking up mail. I am of the opinion that

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the State is not subject to prosecution for violation of an ordinance regulating parking, but that the driver of a State vehicle may be subject to prosecution.

The Illinois legislature has expressly conferred upon local authorities the power to regulate the parking of vehicles in section 11-80-2 of the Illinois Municipal Code (Ill. Rev. Stat. 1977, ch. 24, par. 11-80-2):

"The corporate authorities of each municipality may regulate the use of the streets and other municipal property."

A municipality may also regulate parking on the street as an exercise of its police powers. Section 11-208 of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 $\frac{1}{2}$, par. 11-208) provides in pertinent part:

"Powers of local authorities. (a) The provisions of this Chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;

* * *

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The foregoing statutes establish the authority for a municipality to regulate parking. The State, however, is not subject to prosecution for violation of a municipal park-

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ing ordinance. Generally speaking, the State is not subject to legislative enactments of a municipal corporation. (Newton v. City of Atlanta (1939), 189 Ga. 441, 444, 6 S.E. 2d 61, 63; Board of Councilmen of City of Frankfort et al. v. Commonwealth et al. (1932), 243 Ky. 633, 635, 49 S.W. 2d 548, 549.) Broad principles of sovereignty require that a State or its agency or subdivision performing a governmental function be free of municipal control. (County of Westchester v. Village of Mamaroneck (Sup. Ct. 1964), 255 N.Y.S. 2d 290, 294; 5 McQuillin, Municipal Corporations, § 15.31a at 112 (3rd ed. 1969).) The general rule is that property of the State is exempt from municipal regulation in the absence of a waiver on the part of the State, and such waiver will not be presumed. (Kentucky Institute for Education of Blind v. Louisville (1906), 123 Ky. 767, 774, 97 S.W. 402, 404.) (See, also, 1940 Ill. Atty Gen. Op. 234; 1931 Ill. Atty Gen. Op. 595).

In determining the applicability of municipal ordinances regulating parking to State vehicles, it is also necessary to consider the provisions of section 1 of "AN ACT in relation to immunity for the State of Illinois" (Ill. Rev. Stat. 1977, ch. 127, par. 801), which provides:

"Except as provided in 'AN ACT to create

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the Court of Claims, to prescribe its powers and duties, and to repeal AN ACT herein named', filed July 17, 1945, as amended, the State of Illinois shall not be made a defendant or party in any court."

If an action were brought by a municipality against the State for a parking violation, the State would necessarily be a party defendant contrary to the aforesaid statute.

The State is immune from suit without its consent. Scoa Industries, Inc. v. Howlett (1975), 33 Ill. App. 3d 90, 94; G. H. Sternberg & Co. v. Bond (1975), 30 Ill. App. 3d 874, 877.

The fact that the State is not subject to prosecution for violation of an ordinance regulating parking, however, does not relieve the driver of the vehicle from responsibility and liability for the fine under a properly drawn ordinance. Section 11-205 of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95½, par. 11-205) states in pertinent part:

"Public officers and employees to obey act -- Exceptions. (a) The provisions of this Chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this State or any county, city, town, district or any other political subdivision of the State, except as provided in this Section and subject to such specific exceptions as set forth in this Chapter with reference to authorized emergency vehicles.

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This statute expressly makes the driver of a State vehicle subject to traffic laws and regulations provided for in chapter 11, and this would include the municipal parking ordinances which are authorized in section 11-208 of the Illinois Vehicle Code. (Ill. Rev. Stat. 1977, ch. 95½, par. 11-208.) One of my predecessors, in opinion No. 473 (1947 Ill. Atty Gen. Op. 128), advised that drivers of United States mail trucks are subject to city traffic ordinances as long as they do not conflict with Federal laws or regulations of the United States Post Office Department. Public officials have been held to be subject to prosecution for violation of municipal parking ordinances. See, City of Rochester v. Tutty (City Ct. 1938), 6 N.Y.S. 2d 975, 977.

Secondly, you inquire whether a unit of local government may require that the State purchase commercial parking permits for its mail and messenger vehicles before allowing the vehicle to park in loading and other restricted areas. I am of the opinion that the State is not required to obtain such a permit. Because the State is not subject to municipal regulation, as has been discussed above, the State could not be required to purchase the commercial parking permit for its mail and messenger vehicles before allowing

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the vehicle to park in loading and other restricted areas. The State may, however, desire to obtain a permit in order to protect the driver of its vehicle.

Thirdly, you inquire if the State desires to obtain a parking permit, may the local governmental unit withhold issuance of a permit until previously issued tickets have been paid. Since the State is not liable or responsible for the parking tickets and not subject to municipal regulation, I am of the opinion that a parking permit for the State may not be denied until previously issued tickets have been paid.

Fourthly, you inquire if the State may pay a parking ticket from current appropriations. I am of the opinion that a parking ticket may not be paid by the State. I have discussed above the fact that the State is not subject to a fine for a parking ticket. Section 1(b) of article VIII of the Illinois Constitution provides:

"(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance."

The payment by the State of a fine for a parking ticket is not authorized by law.

Fifthly, you inquire whether a unit of local government may tow or impound a State mail and messenger vehicle

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for violation of a parking ordinance or failure to pay parking fines. I am of the opinion that a unit of local government may not tow or impound a State mail and messenger vehicle for violation of a parking ordinance or failure to pay parking fines. I have set forth above the general rule that property of the State is exempt from municipal regulation in the absence of a waiver on the part of the State, and such waiver will not be presumed.

Finally, you inquire whether my answers to the above questions would be different if the State vehicles were other than mail and messenger vehicles, or if the municipalities were home rule units. They would not. The applicability of the reasoning does not depend on the type of motor vehicle or the home rule status of the municipality. Home rule pertains only to a unit's government and affairs. It does not grant the home rule unit authority to abrogate the State's sovereign immunity or to subject the State to its regulation.

Very truly yours,

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