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FILE NO. S-772

STATE MATTERS:

Whether a Deposit of State
Funds with a Bank or Other
Financial Institution is a
Contract Within the Meaning
of the Fair Employment
Practices Act

Honorable Alan J. Dixon
Treasurer of the State of Illinois
105 State House
Springfield, Illinois 62706

Dear Mr. Dixon:

This responds to your request for an opinion as to whether a deposit of State funds with a bank or other financial institution is a public contract within the meaning of the Fair Employment Practices Act. Ill. Rev. Stat. 1973, ch. 48, pars. 851 to 861.

Section 4 of the Fair Employment Practices Act (Ill. Rev. Stat. 1973, ch. 48, par. 854) provides as follows:

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"§4. Public Contracts.) Every contract to which the State, any of its political subdivisions or any municipal corporation is a party shall be conditioned upon the requirement that the supplier of materials or services or the contractor and his subcontractors, and all labor organizations furnishing skilled, unskilled, and craft union skilled labor, or who may perform any such labor or services, as the case may be, shall not commit an unfair employment practice in this State as defined in this Act. To the full extent to which the State may have authority with respect to such contracts, this Section shall be applicable."

By section 4A (Ill. Rev. Stat. 1973, ch. 48, par. 854A) the Commission is authorized to issue rules and regulations for the purposes of enforcement and administration of section 4 of the Act.

The Fair Employment Practices Act, supra, contains no definition of the term "contract". I have previously, in regard to other situations, determined that a deposit of funds in a bank is a contract. In opinion No. S-575, dated April 13, 1973, I stated as follows:

"A deposit of funds in a bank creates a contractual relation between the bank and the depositor. Sanders v. Merchants State Bank of Centralia, 349 Ill. 547, 563; 1959 Atty. Gen. Op., p. 7; 9 C.J.S., Banks and Banking, sec. 267b, p. 545; 10 Am. Jur. 2d, Banks, sec. 337, p. 299."

There is no basis for determining now that a bank deposit

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is not a contract, particularly for purposes of the Fair Employment Practices Act. To hold that it is not would be in clear conflict with the intent of the Act.

The Supreme Court stated in Peo. ex rel. Moss v. Page, 30 Ill. 2d 271, as follows:

"* * * In construing a statute the primary concern is the legislative intent behind its enactment. (Petterson v. City of Naperville, 9 Ill. 2d 233; Ill. Rev. Stat. 1961, chap. 131, par. 1.01.) To arrive at this intent the court may look not only at the language employed in the legislation, but also the reason and necessity for the law, the evils to be remedied, and the objects and purposes to be obtained. People v. Ikard, 26 Ill. 2d 573, 578; People v. Swartz, 21 Ill. 2d 277; Mid-South Chemical Corp. v. Carpentier, 14 Ill. 2d 514, 517. * * *

Section 1 of the Fair Employment Practices Act (Ill. Rev. Stat. 1973, ch. 48, par. 851) sets forth the objects and purposes of the Act and the reasons and necessity for it as follows:

"§1. Declaration of Policy.) Whereas denial of equal employment opportunity because of race, color, religion, sex, national origin or ancestry with consequent failure to utilize the productive capacities of individuals to the fullest extent deprives a portion of the population of the State of earnings necessary to maintain a reasonable standard of living, thereby tending to cause resort to public charity and may cause conflicts and controversies resulting in grave injury to the

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public safety, health and welfare:

Therefore, it is declared to be the public policy of this State that without in any way precluding any employer from selecting between persons of equal merit, ability, and capabilities, equal employment opportunity or apprenticeship opportunity without discrimination because of race, color, religion, sex, national origin or ancestry should be protected by State law.

It is also the public policy of this State to protect employers, labor organizations and employment agencies from unfounded charges of discrimination."

Illinois thus has a clear public policy demanding equal employment opportunity and preventing discrimination in employment on the basis of religion, sex, national origin or ancestry. It would not be within the legislative intent or the spirit of the Fair Employment Practices Act to circumvent this clear public policy by narrowly defining the term "contract".

I therefore am of the opinion that a deposit of State funds with a bank or other financial institution is a public contract within the meaning of the Act and that the Fair Employment Practices Commission, through its rules and regulations, has the power to enforce section 4 of the Act.

Very truly yours,

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