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SPRINGFIELD

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CRIMINAL LAW AND PROCEDURE:
Full and Part Time Investigators
Under Direct Control of the
State's Attorney are not Exempt
From Statutory Prohibition Against
Carrying Concealed Firearms

Honorable Gene L. Armentrout
State's Attorney
Kane County
Geneva, Illinois 60134

Dear Mr. Armentrout:

This responds to your request for my opinion on whether full and part time investigators under direct control of the State's Attorney may carry concealed firearms in the course of their official duties. For the reasons hereinafter stated, it is my opinion that such investigators may not carry concealed firearms in the course of their official duties.

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Under the provisions of section 24-2 of the Criminal Code of 1961 (Ill. Rev. Stat. 1975, ch. 38, par. 24-2), various classes of persons are exempted from the penalties provided for unlawful use of weapons (i.e., in this case, the carrying of concealed firearms). (Ill. Rev. Stat. 1975, ch. 38, par. 24-1(a)(4).) The only group of investigators per se that are specifically included in the enumerated exemptions of section 24-2 are "agents" and "investigators" of the Illinois Legislative Investigating Commission. (Ill. Rev. Stat. 1975, ch. 38, par. 24-2(a)(5).) This exemption does not apply here. Hence, the only applicable exemption would appear to lie, if at all, in section 24-2(a)(1), which describes "peace officers" as follows:

" * * *
(1) Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.
* * * "

If the State's Attorney's investigative staff is to fall within the purview of that exemption, such investigators would have to meet the definition of "peace officer" as

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stated in section 2-13 of the Criminal Code (Ill. Rev. Stat. 1975, ch. 38, par. 2-13), which includes:

"* * * [A]ny person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses."

Section 107-4(2) of the Criminal Code (Ill. Rev. Stat. 1975, ch. 38, par. 107-4(2)), contains a broader definition of the term, including within its scope "any peace officer or member of any duly organized State, County, or Municipal peace unit or police force of another State". This definition expressly applies only to article 107 of the Criminal Code, dealing with "arrest". Ill. Rev. Stat. 1975, ch. 38, par. 107-1 et seq.

No statutory delineation of the functions or independent authority of State's Attorney's investigators is apparent. Such investigators generally provide staff support for State's Attorneys in carrying out particular functions of their office, serving as a special genre of assistants or aides.

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Under the provisions of section 5 of "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1975, ch. 14, par. 5) the duties of a State's Attorney are enumerated. These include, inter alia, the commencement and prosecution of "all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county"; the commencement and prosecution of "all actions and proceedings brought by any county officer in his official capacity"; and the defense of "all actions and proceedings brought against his county, or against any county or State officer, in his official capacity, within his county".

It is clear that the State's Attorney is chiefly involved in representing the legal interests of the people in his county (Ill. Rev. Stat. 1975, ch. 38, par. 5(1) et seq.) and such activities do not include a peace officer's duty of maintaining public order or making arrests for offenses. (Ill. Rev. Stat. 1975, ch. 38, par. 2-13; see 1933 Ill. Att'y. Gen. Op. 366 [State's Attorney not privileged to carry concealed weapons on his person, or function as a

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peace officer].) Based upon these statutory duties, a State's Attorney is not a "peace officer" within the meaning of either of the definitions in the Criminal Code. Ill. Rev. Stat. 1975, ch. 38, par. 2-13 and 107-4(a).

In my opinion, it follows that the exemption in section 24-2(a)(1) from prosecution for the otherwise unlawful use of weapons as set forth in section 24-1(a)(4) (Ill. Rev. Stat. 1975, ch. 38, par. 24-1(a)) does not apply to "investigators" hired to assist State's Attorneys perform certain duties of their offices, unless those individual "investigators" are also duly authorized or appointed "peace officers" within the meaning of sections 2-13 and 107-4(2) of the Criminal Code of 1961.

Very truly yours,

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