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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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FILE NO. S-1081

**GOVERNMENTAL ETHICS AND  
CONFLICT OF INTEREST:  
Definition of Ministerial  
Under Illinois Purchasing  
Act**

Honorable Michael J. Howlett  
Secretary of State  
Springfield, Illinois 62706

Dear Secretary Howlett:

This responds to your request for an opinion on the question of whether the employment on a contractual basis by your office of the wife of a member of the General Assembly violates section 11.1 of the Illinois Purchasing Act. (Ill. Rev. Stat. 1975, ch. 127, par. 132.11-1.)

This section provides in part as follows:

"It is unlawful for any person \* \* \* holding a seat in the General Assembly, \* \* \* or who is the wife, husband or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper or for any services, materials or supplies, which will

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be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois \* \* \*.

\* \* \*

This Section does not apply to \* \* \* (2) a contract for personal service of a wholly ministerial character including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly \* \* \*"  
(emphasis added.)

Your specific question is whether the person under contract is engaged in services of a wholly ministerial character.

With regard to the contract, you state that it involves payments on a per diem basis and does not call for any specific total amount. She is paid only for the days on which she performs duties for your office. You also state that the attorney has been temporarily suspended from her duties and is not currently being used in regard to the duties under discussion on any per diem basis.

With regard to her duties, you state that the person is a licensed attorney performing duties in the Technical Services Division of your office. She acts as a hearing officer or as counsel in adjudicatory hearings required under the financial responsibility provisions of the Illinois Vehicle Code. (Ill. Rev. Stat. 1975, ch. 95 1/2, pars. 7-100 et seq.) As counsel she is engaged as an advocate on behalf of your office in matters relative to fault or liability of uninsured motorists. As a hearing

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officer, she makes recommendations to you as Secretary of State. You further state that she neither renders opinions nor engages in any function involving rule making or the drafting of regulations.

In general, public officials perform both judicial and ministerial duties. The distinction between these two types of duties has been defined in Johnston v. City of Chicago, 258 Ill. 494, at 498, as follows:

"Official action is judicial where it is the result of judgment or discretion. It is ministerial when it is absolute, certain and imperative, involving merely the execution of a set task, and when the law which imposes it prescribes and defines the time, mode and occasion of its performance with such certainty that nothing remains for judgment or discretion. \* \* \*"

In Peabody v. Sanitary District, 330 Ill. 250, the Illinois Supreme Court considered whether the treasurer of a sanitary district had discretionary (judicial) or ministerial duties. It noted that officials may have both and found that certain duties of the treasurer were distinctly discretionary. Such duties were his duty to determine in which depository to deposit money, his duty to make reports, and his duty to give financial advice to the district in regard to the financial responsibilities of contractors.

The financial responsibility provisions of the Illinois Motor Vehicle Code pertain to the duties of the

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Department of Transportation and the Secretary of State to administer a program for the protection of persons involved in an accident with an uninsured motorist. The Department of Transportation makes the initial determination of whether the uninsured motorist is required to deposit security and in what amount. (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 7-201.) The Secretary of State is given the discretion to specify the form of security required to be deposited under the Act. (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 7-204.) Under section 7-205 (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 7-205) it is the duty of the Secretary of State to determine whether there is a reasonable possibility of a civil judgment being entered in a court of proper jurisdiction against an uninsured motorist involved in an accident. Further if he determines that there is not such a reasonable possibility, the Secretary of State has the discretion to elect to take no further action. Under sections 7-210 and 7-212 (Ill. Rev. Stat. 1975, ch. 95 1/2, pars. 7-210 and 7-212), the Secretary of State is authorized to determine that the deposit of security is no longer necessary when he is satisfied as to the existence of certain facts and to determine that the amount of security should be reduced. He is also required to hold hearings when requested

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by persons aggrieved by his action. Ill. Rev. Stat. 1975,  
ch. 95 1/2, par. 7-101.

The person about whom you inquire is engaged in advising the Secretary of State on all these matters in which the Secretary of State has discretion. She has a degree of discretion in how she shall advise him. As a hearing officer, she has considerable discretion in determining the weight to be given to evidence presented and in reaching a decision, and as an advocate, she has considerable discretion in determining how a case will be presented. In neither case could the duties be considered ministerial. The duties are not "absolute, certain and imperative". They involve a great deal of judgment.

I therefore am of the opinion that the person is not engaged in services of a wholly ministerial character and that her contract of employment is subject to the provisions of section 11.1 of the Illinois Purchasing Act, supra.

Very truly yours,

A T T O R N E Y   G E N E R A L