OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 01-008

LICENSED OCCUPATIONS:
Required Posting With Municipalities
and Counties of Surety Bonds by
Private Alarm Companies

The Honorable Christopher J. Lauzen
State Senator, 21st District
Chairman, Senate Commerce/Industry Committee
State House, Room 613B
Springfield, Illinois 62706

Dear Senator Lauzen:

I have your letter wherein you inquire whether a municipality or a county may require a private alarm company, which is licensed pursuant to the provisions of the Private Detective, Private Alarm, Private Security and Locksmith Act of 1993 (225 ILCS 446/1 et seq. (West 1998)), to post a surety bond prior to performing work within the unit of local government's corporate boundaries. For the reasons hereinafter stated, it is my opinion that neither municipalities nor counties may require a State licensed private alarm company to post a surety bond prior to conducting business within their corporate boundaries.

According to the information you have provided, at least four municipalities in the Chicago metropolitan area have adopted policies that require a private alarm contractor desiring to engage in business within the municipality to post a $10,000 surety bond prior to engaging in any fire alarm work in the municipality. You have asked whether such requirements are permissible under the provisions of the Private Detective, Private Alarm, Private Security and Locksmith Act of 1993.

The Private Detective, Private Alarm, Private Security and Locksmith Act of 1993 (hereinafter referred to as "the Act") was enacted by the General Assembly "* * * to regulate persons and businesses licensed under this Act for the protection of the public. * * *" (225 ILCS 446/10 (West 1998).) Specifically, the General Assembly has determined that the regulation of private detectives, private alarm contractors, private security contractors and locksmiths affects the public health, safety and welfare (225 ILCS 446/10 (West 1998)), and that the licensing and regulation of those activities by the State is appropriate. To ensure uniform standards throughout the State, section 40 of the Act provides:

> "Home Rule preemption. Pursuant to paragraph (h) of Section 6 of Article VII of the Illinois Constitution of 1970, the power to regulate the private detective, private security, private alarm, or locksmith busi-

> ness shall be exercised exclusively by the State and may not be exercised by any unit of local government, including home rule units." (Emphasis added.) (225 ILCS 446/40 (West 1998).)

In United Private Detective & Security Ass'n, Inc. v. City of Chicago (1976), 62 Ill. 2d 506, the Illinois Supreme Court concluded that section 27 of "AN ACT to provide for licensing and regulating Detectives and Detective Agencies and to safeguard the interest of the public" (see Public Act 78-1232, effective September 5, 1974; Ill. Rev. Stat. 1975, ch. 38, par. 201-27), the precursor to current section 40 of the Act (see Public Act 83-1069, effective January 5, 1984, and Public Act 88-363, effective January 1, 1994), granted to the State the exclusive authority to regulate the private detective business, thereby invalidating an ordinance of the city of Chicago which required a State licensed detective agency to obtain a license from the city and to submit proof of liability insurance coverage in the amount of $1,000,000. In reaching its conclusion, the supreme court reviewed the provisions of section 6 of article VII of the Illinois Constitution of 1970 and the Constitutional Committee comments related thereto (see 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3055-3105, 3316-3360; 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1569, 1641-1645) and stated:

" * * *

We cannot accept the defendants' contention that the exclusivity in favor of State regulation effected by Public Act 78-1232 is limited by the extent of the regulation then in effect under the Private Detective Act. The Act itself certainly does not allow an interpretation that its reach was to be so limited. With complete explicitness it states that the power to regulate the private detective business shall be exercised exclusively by the State and that it may not be exercised by any unit of local government, including home rule units. Section 6(h) unambiguously authorizes the General Assembly to provide for this exclusive exercise by the State found in Public Act 78-1232. Section 6(i) allows home rule units to exercise their powers and functions concurrently with the State only to the extent that the General Assembly 'does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.' There is nothing to suggest any limited exclusivity such as the defendants argue for. There is no indication that to be exclusive the State's regulation must be, impossibly, exhaustive or complete.

That a declaration of exclusivity under section 6(h) unconditionally bars a home rule unit's exercise of the affected power is illustrated in an example of the operation of section (h) appearing in the majority report of the convention's Committee on Local Government:

> '5. Home-Rule City adopts an ordinance requiring door-to-door salesmen to obtain a city license (conditioned upon the meeting of certain qualifications and the payment of a reasonable fee) before engaging in their trade with the city. The ordinance is valid under the

> home-rule powers granted in paragraph 3.1(a) [section 6(a)]. The General Assembly could forbid municipal licensing of door-to-door salesmen by a three-fifths vote of the membership of each house elected and serving, pursuant to paragraph 3.2(a) [section 6(g)]. Under paragraph 3.2(b) [section 6(h)], the General Assembly could instead provide for a state wide system of licensing, effected either through a state agency or through municipalities and other local governments acting as agents of the state. This state-wide system would, if declared exclusive by the General Assembly, preclude additional local licensing under paragraph 3.2(b) [section 6(h)].' 7 Proceedings 1652-1653.
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> United Private Detective & Security Ass'n, Inc. v. City of Chicago (1976), 62 Ill. 2d at 514-15.

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The language of section 40 of the Act is virtually identical to that of section 27 of the Private Detective Act. Consequently, based upon the court's holding in United Private Detective & Security Ass'n, Inc. v. City of Chicago, it is my opinion that section 40 of the Private Detective, Private Alarm, Private Security and Locksmith Act of 1993 unconditionally bars a municipality or a county, whether home rule or non-home-rule, from attempting to license or otherwise regulate persons and businesses which are subject to the Act's provisions. Therefore, it is my opinion that neither municipalities nor counties may

require a private alarm company to post a surety bond as a prerequisite to conducting business within their corporate boundaries.

Sincerely,

JAMES E. RYAN
ATTORNEY GENERAL