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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 1, 1976

FILE NO. S-1190

HIGHWAYS:

Applicability of P.A. 79-1441
to Illinois State Toll Highway
Authority

Thomas Fuller, Acting Director
Equal Employment Opportunity Office
1440 State of Illinois Building
160 N. LaSalle Street
Chicago, Illinois 60601

Dear Mr. Fuller:

I have your letter wherein you ask whether the Illinois State Toll Highway Authority is exempted from the provisions of P.A. 79-1441 which became effective on August 26, 1976. P.A. 79-1441 added sections 20 through 20f to the Personnel Code. The provisions of the Act establish a program for assuring that women, minorities and handicapped individuals are given an opportunity for

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state employment that is equal to that given to other citizens.

Section 20 of the Personnel Code, as added by P.A. 79-1441, requires each state agency to appoint an Equal Employment Opportunity Officer, and section 20a provides that each state agency shall submit an equal employment opportunity plan to the State Equal Employment Opportunity Officer. The latter section reads as follows:

"Sec. 20a. The Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer of this State, and the head of each State department, agency, board or commission and other instrumentality of the executive branch, and the governing board of each public college or university shall, within 90 days after the effective date of this amendatory Act of 1976, and annually thereafter, submit to the State Equal Employment Opportunity Officer a plan for assuring equal employment opportunity. This plan shall include a current detailed status report (a) indicating, by each position in State service, the number, percentage, and average salary of women, minorities, and handicapped individuals employed; (b) identifying all positions in which the percentage of women, minorities, and handicapped employed is less than 4/5 the percentage of women, minorities, and handicapped in the State work force; (c) specifying the goals and methods for increasing the percentage of women, minorities, and handicapped employed in these positions; and (d) indicating progress and problems towards meeting equal employment opportunity goals." (emphasis added.)

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The program for equal employment opportunity is developed in the remaining provisions of P.A. 79-1441. The State Equal Employment Officer is charged with setting forth a method by which state agencies can implement their equal opportunity plans. The Officer also provides agencies with assistance in achieving their equal employment opportunity goals.

In opinion No. S-330 (1971 Ill. Att'y. Gen. Op. 88) I advised that the Illinois State Toll Highway Authority was a state agency. That opinion relied on section 3 of "AN ACT in relation to the construction, operation, regulation and maintenance of a system of toll highways, etc." [Toll Highways Act] (Ill. Rev. Stat. 1975, ch. 121, par. 100-3) which states in pertinent part as follows:

"§ 3. There is hereby created an Authority to be known as The Illinois State Toll Highway Authority, which is hereby constituted an instrumentality and an administrative agency of the State of Illinois. * * *" (emphasis added.)

Because the Illinois State Toll Highway Authority is a state agency, it is my opinion that it must comply with the duties imposed on all state agencies by P.A. 79-1441.

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The Authority is not exempt from the provisions of P.A. 79-1441. Section 4c of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b104c)) exempts the Authority and several officers and agencies from jurisdictions A, B and C of the Department of Personnel. Yet some of those officers specifically so exempted are specifically covered by P.A. 79-1441. There can be no doubt that it was the intent of the General Assembly that all state agencies comply with P.A. 79-1441.

Jurisdictions A, B and C are described in section 4a of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b104a) as follows:

"There are hereby created three separate areas of jurisdiction of the Department, as follows:

(1) Jurisdiction A, with respect to the classification and compensation of positions in the State service.

(2) Jurisdiction B, with respect to the positions in the State service to which persons must hold appointments on a basis of merit and fitness.

(3) Jurisdiction C, with respect to conditions of employment in State service."

The exemption of the Toll Highway Authority does not extend to provisions of the Code that are not concerned with the

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Department of Personnel's responsibility to establish classifications, qualifications and conditions for state employment. This fact is reflected in section 8(c) of the Toll Highways Act (Ill. Rev. Stat. 1975, ch. 121, par. 100-8(c)) which gives the Authority the power:

"(c) To employ and discharge, without regard to the requirements of any civil service or personnel act, such administrative, engineering, traffic, architectural, construction, and financial experts, and inspectors, and such other employees, as are necessary in the Authority's judgment to carry out the purposes of this Act; and to establish and administer standards of classification of all of said persons with respect to their compensation, duties, performance, and tenure; and to enter into contracts of employment with said persons for such periods and on such terms as the Authority deems desirable."

P.A. 79-1441 does not require state agencies to employ or discharge their employees according to the classifications, qualifications and conditions for state employment set by the Department of Personnel. The Act simply provides that state agencies develop and implement plans for giving women, minorities and the handicapped an equal opportunity to obtain state employment. Its purpose is to make sure that positions in state agencies are made available to women, minorities and the handicapped. P.A. 79-1441,

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therefore, does not conflict with the Authority's power to employ and discharge its employees without regard to the classifications, qualifications and conditions for state employment established by the Department of Personnel.

In conclusion, I am of the opinion that the Illinois State Toll Highway Authority is not exempt from the provisions of P.A. 79-1441.

Very truly yours,

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