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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 80-045

CRIMINAL LAW:
Possession of Firearms

Honorable Robert Morrow
State's Attorney
Kane County
404 Kane County Courthouse
Geneva, Illinois 60134

Dear Mr. Morrow:

This is in response to your predecessor's letter in which he asked whether the provisions of section 24-3.1(a)(5) of the Criminal Code (Ill. Rev. Stat. 1979, ch. 38, par. 24-3.1(a)(5)) prohibit a police officer, who was a patient in a mental institution for two or three days and has since returned to work, from carrying a gun. For the reasons hereinafter stated, it is my opinion that, on the facts you submit, section 24-3.1(a)(5) prohibits the possession of a gun by the officer.

Under the provisions of section 24-3.1(a)(5),

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possession of firearms by anyone who has in the previous five years been a patient in a mental institution is specifically made a crime:

"Unlawful Possession of Firearms and Firearm Ammunition. (a) A person commits the offense of unlawful possession of firearms or firearm ammunition when:

* * *

(5) He has been a patient in a mental hospital within the past 5 years and has any firearms or firearm ammunition in his possession;

* * *

It is well settled that a statute which is plain and unambiguous is not open for construction since the legislature should be considered to have intended to mean what is plainly expressed. (Bovinette v. City of Mascoutah (1973), 55 Ill. 2d 129, 30 N.E.2d 313.) The intent of the legislature is plain - to prohibit anyone who has been a patient in a mental institution in the previous five years from possessing a gun. No exceptions to this prohibition are provided by either this provision or elsewhere in the Criminal Code of 1961. (Ill. Rev. Stat. 1979, ch. 38, par. 1-1 et seq.) On the basis of the above discussion, it is clear that the provisions of section 24-3.1(a)(5) of the Criminal Code are applicable to the situation you have presented.

Very truly yours,


ATTORNEY GENERAL