

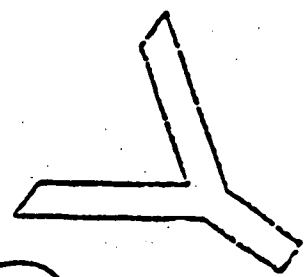


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ATTORNEY GENERAL
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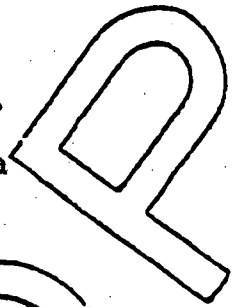
November 23, 1981

FILE NO. 81-033

**PUBLIC HEALTH;
Police Powers of Dangerous
Drugs Commission
Investigators**



Thomas B. Kirkpatrick, Jr.
Executive Director
Dangerous Drugs Commission
300 North State Street
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Chicago, Illinois 60610



Dear Mr. Kirkpatrick:

I have your letter in which you request my opinion with regard to the effect of an amendment to section 26 of the Dangerous Drug Abuse Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 120.26) upon the authority of Dangerous Drugs Commission investigators to exercise police powers while enforcing the provisions of the Dangerous Drug Abuse Act. Section 26 of the Dangerous Drug Abuse Act, as amended, provides in pertinent part:

"It is hereby made the sole and exclusive duty of the Commission, and its designated agents, officers and investigators, to investigate all violations of this Act. * * *

* * *

The Commission, for the purpose of more effectively carrying out the provisions of the laws in relation to this Act, may appoint such investigators as it may deem necessary. It shall be the duty of such investigators to investigate and report violations of the provisions of this Act administered by the Commission. With respect to the enforcement of the provisions of this Act, such investigators shall have the authority to serve subpoenas, summonses, and administrative inspection warrants, and are conservators of the peace, and as such, have and may exercise during the course of an inspection or investigation of controlled premises all the powers possessed by policemen in the cities and sheriffs in the counties, except that they may exercise such powers anywhere in the State." (Emphasis added.)

The underscored language above was added by Public Act 81-900, effective January 1, 1980.

The intention of the General Assembly in enacting a statute is the law, and the intent is to be given effect, if possible. (Kloss v. Suburban Cook County Sanitarium (1949), 404 Ill. 87, 96; People v. McCoy (1976), 63 Ill. 2d 40, 44.) In determining the intention of the General Assembly, it is proper to consider the course of legislation upon a particular statute. (The People v. C.&E.I.Ry.Co. (1936), 365 Ill. 202, 204.) A review of the legislative history of section 26 of the Dangerous Drug Abuse Act is useful in attempting to determine the intent of the General Assembly in enacting the aforementioned amendment.

Originally, section 26, as added by Public Act 78-977, effective June 24, 1974, provided in pertinent part:

"It is hereby made the sole and exclusive duty of the Commission, and its designated agents, officers and investigators, to investigate all violations of this Act * * *.

* * *

The Commission, for the purpose of more effectively carrying out the provisions of the laws in relation to this Act, may appoint such investigators as it may deem necessary. It shall be the duty of such investigators to investigate and report violations of the provisions of this Act administered by the Commission. With respect to the enforcement of the provisions of this Act, such investigators shall have the authority to serve subpoenas, summonses and administrative inspection warrants anywhere in the State."

Subsequently, section 26 was amended by Public Act 79-1465, effective September 3, 1976, which added the language presently found in the last clause with the exception of the words "or investigation".

Thereafter, pursuant to your request, my predecessor issued an opinion regarding the extent of the police powers granted to Dangerous Drugs Commission investigators by section 26. In opinion No. NP-1199, issued January 13, 1977, my predecessor advised, inter alia, that investigators were authorized to exercise the powers possessed by police officers only during the inspection and investigation of "controlled premises", as that term is defined in section 16 of the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 120.16), and that such investigators were not authorized to make arrests for violations of State laws, or to seek or execute search and arrest warrants at locations other than controlled premises. After the issuance of opinion No. NP-1199, section 26 was amended by Public Act 81-900, which added the words "or investigation" to its last clause.

It is ordinarily assumed that an amendment to a statute was intended to change the law as it formerly existed, but that assumption is not controlling. (Roth v. Northern Assurance Co. Ltd. (1964), 32 Ill. 2d 40, 50.) Further, where the Attorney General construes the provisions of a statute and the General Assembly thereafter by amendment attempts to clarify the terms of such statute, a presumption is created that the Attorney General's construction was not in accord with the original intent of its enactment. (Bruni v. Department of Registration and Education (1974), 59 Ill. 2d 6, 12.) Certain statements of individual legislators during the floor debates on House Bill 1290, which was enacted as Public Act 81-900, indicate that the bill was intended in part to respond to the construction of section 26 contained in opinion No. NP-1199. In the revision of statutes, however, neither an alteration in phraseology, nor the omission or addition of words in the revised statute authorizes a change of construction except where the intent of the legislature is clear or the amendatory language plainly requires it. Vause & Striegel, Inc. v. McKibben (1942), 379 Ill. 169, 175; Barthelow v. Davis (1916), 276 Ill. 505, 509-10.

The amendment of section 26 by Public Act 81-900 consisted merely of the insertion of the words "or investigation" to the clause delineating the powers and duties of Dangerous Drugs Commission investigators. Reference to opinion No. NP-1199 shows that in construing section 26 of the Act, my predecessor

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used the term "investigation" interchangeably with "inspection" as that term related to "controlled premises". The plain language of the amendment does not afford a basis for changing the construction of the statutory provision in question.

The interpretation of statutes must be guided and governed by the legislative intent as expressed in the statute, not by what was apparently or possibly intended but not expressed therein. (Peavler v. City of Mt. Vernon (1910), 158 Ill. App. 610, 614.) Statutes cannot be construed on the basis of surmising what the General Assembly might have intended to say, but failed to express; it is not appropriate to supply omissions or remedy defects in matters committed to the General Assembly. (The People v. Patten (1930), 338 Ill. 385, 390-91.) Therefore, construing the amendatory language contained in section 26 in accordance with the stated canons of statutory construction, I must conclude that the amendment does not mandate a change in the construction previously attributed to the provision. Having so concluded, I will address your specific question in accord with the construction of the statute as heretofore stated.

You first ask if Dangerous Drugs Commission investigators may exercise the powers of peace officers when investigating allegations of criminal conduct on the part of officers, agents, employees, or clients of drug abuse treatment programs, whether the investigation takes place on controlled premises or elsewhere. It is my opinion that investigators are authorized to exercise police power only while physically

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upon controlled premises, which are defined, in general, as facilities for the treatment, care and rehabilitation of addicts and abusers of dangerous drugs. (Ill. Rev. Stat. 1979, ch. 91 1/2, pars. 120.14(a), 120.16(b)(1).) Even though the definition in subsection 16(b)(1) of the Act is limited by the words "For purposes of this Section only", it seems clear that, since no other definition is given in the Act and the term has no other commonly understood meaning, the definition applies to the term "controlled premises" whenever it is mentioned in the statute.


You also ask if investigators may exercise the powers of peace officers when investigating the sale or delivery of controlled substances in the vicinity of drug abuse treatment facilities, even though the officers, agents, employees, or clients of a drug abuse program may not be directly involved. For the reasons stated in my response to your first question, it is my opinion that the exercise of police powers by investigators at locations other than controlled premises is not authorized by section 26 of the Act. Therefore, although the duties of investigators may appropriately include investigation of violations of the provisions of the Act occurring elsewhere than on controlled premises, they may not exercise police powers except when physically upon controlled premises.

You also ask at what point an investigator may begin to exercise his police powers. It is my opinion that investigators

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employed by the Dangerous Drugs Commission may exercise the powers possessed by peace officers anywhere in the State, but only while on property falling within the definition of "controlled premises" contained in the Dangerous Drugs Abuse Act. Therefore, an investigator's exercise of such powers may commence only when he arrives at controlled premises to conduct an inspection or investigation and must cease when he leaves the controlled premises. Thus, he possesses no police power when traveling to or from the site of his investigation.

Very truly yours,


ATTORNEY GENERAL