OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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I - 06-052

TORT LIABILITY:
Liability and Immunity
for Volunteers

Mr. Mike Chamness, Chair
Illinois Terrorism Task Force
Office of Homeland Security
110 East Adams Street
Springfield, Illinois 62701

Dear Mr. Chamness:

I have your letter inquiring whether the volunteers who participate in the Citizens Corps Program, the Homeland Security volunteerism initiative created by President Bush and implemented in Illinois through the Office of Homeland Security's Illinois Terrorism Task Force, are protected from civil liability either by immunity or indemnification. For the reasons which follow, volunteers organized by and acting within the scope of the authority of a State agency or unit of local government, and serving in times of emergency or disaster, may be immune from civil liability arising from negligence depending on the particular facts and circumstances of a given situation. Likewise, indemnification may be available to those volunteers who satisfy specific statutory criteria. Because various statutes may apply in different circumstances, it is not possible to determine the precise boundaries of any potential volunteer's eligibility for immunity or indemnification. Rather, such a determination will require a case-by-case analysis based on the facts unique to each volunteer, the situation, and the surrounding circumstances.

BACKGROUND

According to information you have provided, the Illinois Terrorism Task Force's Committee on Volunteers and Donations oversees the Citizen Corps, a federally created program that encourages units of local government to develop councils to oversee volunteer initiatives and programs for citizens within their jurisdictions. One program, the Medical Reserve Corps, organizes specially trained volunteers such as doctors, nurses, and emergency medical technicians to serve in times of need. As these programs develop, issues have arisen regarding volunteer liability and immunity. You ask, therefore, whether the volunteers who participate in such programs will qualify for the protections afforded by the State Employee Indemnification Act (5 ILCS 350/1 *et seq.* (West 2004)), the Line of Duty Compensation Act (820 ILCS 315/1 *et seq.* (West 2004)), or other Illinois laws.

Before responding to your specific questions, it is helpful to review the Volunteer Protection Act of 1997 (the Volunteer Protection Act) (42 U.S.C.A. §14501 *et seq.* (West 2005)), a Federal statute of general applicability that provides minimum protections to volunteers:[1]

> **(a) Liability protection for volunteers**
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> Except as provided in subsections (b) and (d) of this section, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if–
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> **(1)** the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
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> **(2)** if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
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> **(3)** the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious,

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[1]For purposes of the Volunteer Protection Act, "the term 'volunteer' means an individual performing services for a nonprofit organization or a governmental entity who does not receive (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or (B) any other thing of value in lieu of compensation, in excess of $500 per year[.]" The term includes a volunteer serving as a director, officer, trustee, or direct service volunteer. 42 U.S.C.A. §14505(6) (West 2005).

> flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
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> **(4)** the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to–
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> **(A)** possess an operator's license; or
>
> **(B)** maintain insurance. 42 U.S.C.A. §14503(a) (West 2005).

The Volunteer Protection Act preempts inconsistent State laws, but does not preempt laws that provide more protection to any category of volunteers performing services for a nonprofit organization or governmental entity. 42 U.S.C.A. §14502 (West 2005). In instances where volunteers may be held liable, the Act limits the imposition of punitive damages (42 U.S.C.A. §14503(e) (West 2005)) and limits volunteer liability for noneconomic damage to the percentage of harm actually caused by the volunteer (42 U.S.C.A. §14504 (West 2005)).

Although the Volunteer Protection Act provides minimal levels of protection to volunteers, there is little case law nationwide, and none in Illinois, discussing the relationship between the Volunteer Protection Act and State immunity and indemnification statutes. Whether the Volunteer Protection Act provides greater protection for volunteers than Illinois law will depend on the particular Illinois statute at issue and the facts of a particular situation.

ANALYSIS

Immunity

Several Illinois laws extend immunity from liability to persons responding to an emergency or a disaster. Not all of the statutes, however, apply to volunteers. Whether a particular statute provides immunity to a qualifying volunteer will depend on the language of that statute and the facts of each case.

Tort Immunity Act

You have described the Citizens Corps as a program encouraging units of local government to develop councils to oversee volunteer initiatives or programs. Based on the apparent involvement of units of local government, the Local Governmental and Governmental

Employees Tort Immunity Act (the Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2004)) is the most general source[2] of immunity to cover the efforts of such volunteers.[3] The Tort Immunity Act fully immunizes volunteers with respect to the determination of policy and the exercise of discretion (745 ILCS 10/2-201 (West 2004)) and for good faith actions taken pursuant to a law later found to be invalid or unconstitutional (745 ILCS 10/2-203 (West 2004)). Immunity is also provided with respect to the acts or omissions of another person (745 ILCS 10/2-204 (West 2004)), entry upon property (745 ILCS 10/2-209 (West 2004)), and negligent misrepresentation or provision of information (745 ILCS 10/2-210 (West 2004)). The Tort Immunity Act, however, does not immunize negligent health care treatment provided by a public employee who undertakes to prescribe or administer any individual treatment for mental or physical illness. 745 ILCS 10/6-106 (West 2004).

Consequently, the Tort Immunity Act likely would immunize the governmental function aspects of volunteer activity on behalf of a unit of local government, such as policy decisions regarding where to send medical teams and priorities for treatment, without regard to whether persons making those decisions are compensated. However, actual treatment of individual patients would not be immunized by the Tort Immunity Act. Such health care treatment would fall instead under the Good Samaritan Act (745 ILCS 49/1 *et seq.* (West 2004)), which generally immunizes against negligence for emergency care, if such care is provided without fee. Although there is no case law analyzing the relationship between the Good Samaritan Act and the Tort Immunity Act, when participating in the development of emergency management or disaster recovery plans, individuals who are licensed health care professionals likely will have the same immunity as other participants without regard to compensation. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

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[2]There are specific provisions regarding immunity and liability for police and correctional activities (745 ILCS 10/4-101 *et seq.* (West 2004)), fire prevention and rescue services (745 ILCS 10/5-101 *et seq.* (West 2004)), and medical, hospital, and public health activities (745 ILCS 10/6-101 *et seq.* (West 2004)).

[3]Section 1-202 of the Tort Immunity Act (745 ILCS 10/1-202 (West 2004)) defines "employee" to include present and former officers, board members, commissions or committees, agents, volunteers, servants, or employees, whether or not compensated, but not independent contractors. Therefore, when various sections of the Tort Immunity Act immunize the local governmental entity with respect to acts of its employees, the entity is also immunized with respect to acts of volunteers working on its behalf. *See* 1976 Ill. Att'y Gen. Op. 324. Further, based on the definition of "employee," volunteers for units of local government supervised by paid employees are entitled to the same immunity as public employees under the Tort Immunity Act. *Trotter v. School District 218*, 315 Ill. App. 3d 1, 10-11 (2000), *appeal denied*, 191 Ill. 2d 561 (2000).

Good Samaritan Act

The Good Samaritan Act limits the liability of certain licensed medical professionals and others who respond to emergencies in Illinois.[4] Generally, the Good Samaritan Act provides that such individuals who, in good faith, render emergency care without fee[5] will

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[4]Specifically, section 25 of the Good Samaritan Act (745 ILCS 49/25 (West 2004)) provides immunity, except for willful or wanton misconduct, to any person licensed under the Medical Practice Act of 1987 (225 ILCS 60/1 *et seq.* (West 2004)) or any person licensed to practice the treatment of ailments in any other state or territory of the United States who, in good faith, provides emergency care without fee to a person.

Similar immunity for providing emergency care without fee is provided for: physician assistants (745 ILCS 49/46 (West 2004)); physical therapists (745 ILCS 49/45 (West 2004)); professional nurses and practical nurses (745 ILCS 49/35 (West 2004)); advanced practice nurses (745 ILCS 49/34 (West 2004)); and emergency medical technicians (745 ILCS 49/70 (West 2004), as amended by Public Act 94-826, effective January 1, 2007). The following professionals, however, are immunized only for providing emergency care without fee to a victim of an accident at the scene of the accident: dentists (745 ILCS 49/15 (West 2004)); optometrists (745 ILCS 49/42 (West 2004)); podiatrists (also applies in case of nuclear attack) (745 ILCS 49/50 (West 2004)); respiratory care practitioners (also applies to victims of a natural disaster) (745 ILCS 49/55 (West 2004)); and veterinarians (also applies to human victims in a catastrophe) (745 ILCS 49/60 (West 2004)).

Licensed professional nurses and practical nurses also have broad immunity from damages and from suit, except for willful or wanton misconduct, when providing nursing services without fee. 745 ILCS 49/40 (West 2004). Persons who have completed certain training courses or received specified certifications have immunity from damages and from suit, except for willful and wanton misconduct, when providing assistance without fee: persons certified in basic cardiopulmonary resuscitation (CPR) who comply with generally recognized standards when providing emergency CPR (745 ILCS 49/10 (West 2004)); persons who have successfully completed a course in basic emergency care of a person in cardiac arrest that included training in the operation and use of an automatic external defibrillator (AED) in accordance with American Heart Association standards when rendering emergency medical care involving the use of an AED (745 ILCS 49/12 (West 2004)); and persons certified in first aid by the American Red Cross or the American Heart Association when rendering assistance (Public Act 94-825, effective July 1, 2006, to be codified at 745 ILCS 49/67).

[5]The Good Samaritan Act does not define the phrase "without fee." There are no reported cases in Illinois construing the phrase "without fee" in the context of disaster response. Illinois appellate courts, however, historically have determined that emergency care provided by a physician in hospital or clinic settings was provided without fee when a patient did not pay for the specific services provided by that physician. *See Estate of Heanue v. Edgcomb*, 355 Ill. App. 3d 645 (2005) (although physician benefitted financially from the medical group doing business with plaintiff patient, the physician was entitled to immunity because the financial relationship did not constitute charging a fee for services); *Rivera v. Arana*, 322 Ill. App. 3d 641 (2001) (the fact that the physician was never paid for his services was controlling); *Villamil v. Benages*, 257 Ill. App. 3d 81 (1993), *appeal denied*, 155 Ill. 2d 577 (1994) (although physician sent a letter to the plaintiff patient requesting her public aid number so that he could bill her, the fact that he never sent a bill was controlling); *Johnson v. Matviuw*, 176 Ill. App. 3d 907 (1988), *appeal denied*, 125 Ill. 2d 566 (1989) (hospital bill sent to plaintiff was for supplies and drugs used during the emergency and not for the physician defendant's services). The United States District Court for the Northern District of Illinois recently determined, however, that a fee exists when either a doctor is paid for his services or the patient pays a bill for those services. *Henslee v. Provena Hospitals*, 373 F. Supp. 2d 802 (N.D. Ill. 2005). The court in *Henslee* held that a physician who was paid for his services on a *per diem* basis was not immune under the Good Samaritan Act because he received a fee in rendering emergency care to the plaintiff even if plaintiff was never billed for his services. *Henslee*, 373 F. Supp. 2d at 814.

not be liable for civil damages unless their acts or omissions constitute willful and wanton misconduct. In the event medical personnel receive a fee for the provision of emergency care, a loss of immunity under the Good Samaritan Act may result.

While the provisions of the Good Samaritan Act will apply to protect licensed medical professionals and certain other individuals who provide emergency care in various situations without fee, as previously noted, the Tort Immunity Act may provide greater protection to persons organized and supervised by units of local government to provide planning and policy services, as that Act's provisions more broadly immunize discretionary conduct. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

Illinois Emergency Management Agency Act

The Illinois Emergency Management Agency Act (the IEMA Act) (20 ILCS 3305/1 *et seq.* (West 2004)) includes two immunity provisions. Section 15 of the IEMA Act (20 ILCS 3305/15 (West 2004)) immunizes the State, any political subdivisions of the State, as well as their agents, employees, or representatives engaged in any emergency management response or recovery activities while complying with or attempting to comply with the provisions of the IEMA Act.[6] This provision will apply to those volunteers who are agents or representatives of the State or any political subdivision of the State.

Subsection 21(a) of the IEMA Act (20 ILCS 3305/21(a) (West 2004)) additionally immunizes against negligent property owners who voluntarily and without compensation allow their property to be used for sheltering persons during an actual or impending disaster or during

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[6]Section 15 of the IEMA Act provides that:

> *Neither the State, any political subdivision of the State, nor, except in cases of gross negligence or willful misconduct, * * * the agents, employees, or representatives of any of them, engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act is liable for the death of or any injury to persons, or damage to property, as a result of such activity.* This Section does not, however, apply to political subdivisions and principal executive officers required to maintain emergency services and disaster agencies that are not in compliance with Section 10 of this Act, notwithstanding provisions of any other laws. (Emphasis added.)

Because of the placement of the phrase "except in cases of gross negligence or willful misconduct," it appears that the State and political subdivisions are fully immunized, while their agents, employees, or representatives are immunized only in the absence of gross negligence or willful misconduct.

an exercise.[7] Subsection 21(c) (20 ILCS 3305/21(c) (West 2004)) immunizes any private persons, firms, corporations, and their agents or employees, except for willful misconduct, for rendering assistance or advice at the request of the State or any political subdivision under the IEMA Act during an actual or impending disaster.[8] Because the immunity provisions contained in the IEMA Act do not immunize individuals for gross negligence or willful misconduct, it is possible that the Tort Immunity Act may provide greater protection with respect to, for example, the exercise of policy making or discretionary functions. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

Emergency Management Assistance Compact Act

The Emergency Management Assistance Compact Act (the EMAC Act) (45 ILCS 151/1 *et seq.* (West 2004)) governs mutual assistance between states that have adopted the EMAC Act in managing emergencies or disasters. Article VI of the EMAC Act (45 ILCS 151/5 (art. VI) (West 2004)) concerns liability, and provides:

> Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another

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[7]Subsection 21(a) of the IEMA Act provides:

> (a) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual or impending disaster, or a exercise together with his or her successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission, or for negligently causing loss of, or damage to, the property of such person.

[8]Subsection 21(c) of the IEMA Act provides:

> (c) Any private person, firm or corporation, and any employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct.
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> The immunities provided in this subsection (c) shall not apply to any private person, firm or corporation, or to any employee or agent of such person, firm or corporation whose act or omission caused in whole or in part such actual or impending disaster and who would otherwise be liable therefor.

> state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

The EMAC Act does not define the terms "officers" and "employees." It does provide for the formulation of interstate mutual aid plans and procedures by designees of the governors of the party states. 45 ILCS 151/5 (arts. II, III) (West 2004).[9] Therefore, the Committee on Volunteers and Donations may wish to review any existing mutual aid plans which have been developed by IEMA and neighboring states to determine whether volunteers are included and to make recommendations for amendments as necessary. However, the limitation on liability provided in the EMAC Act will apply only with respect to personnel of a party state rendering aid in another state, and not to individuals who unilaterally offer assistance in an emergency.

Oil and Hazardous Materials Spills

Volunteers who may be called on to assist at the scene of oil or chemical spills or releases should be aware of the Illinois Oil Spill Responders Liability Act (740 ILCS 113/1 *et seq.* (West 2004)) and the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.* (West 2005)). The Illinois statute applies with respect to oil spills or releases of material not designated as hazardous substances under Federal law, while the Federal law applies to those materials which are hazardous substances. Both laws provide limitations on liability for negligence for persons responding to a spill who render care, assistance, or advice consistent with the National Contingency Plan, as otherwise directed by the Federal on-scene coordinator, or by the State official with responsibility for oil spill response. Neither law immunizes conduct causing a spill or grossly negligent, reckless, willful, wanton, or intentional misconduct. The Illinois law also does not apply with respect to personal injury or wrongful death. 740 ILCS 113/10 (West 2004). Although the Federal law does not specifically state that it applies to volunteers, it applies to persons working within the scope of their authority for the State or a unit of local government (42 U.S.C.A. §§9607, 9619 (West 2005)). A determination of whether a volunteer qualifies for immunity under either of these laws will depend on the specific facts of each case.

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[9]States may also enter into supplementary agreements which may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. 45 ILCS 151/5 (art. VII) (West 2004).

Indemnification

You have also asked about the applicability to volunteers of certain indemnity statutes, such as the State Employee Indemnification Act (5 ILCS 350/0.01 *et seq.* (West 2004)) and the Line of Duty Compensation Act (820 ILCS 315/1 *et seq.* (West 2004)). Indemnity will be available to volunteers who fall within the statutory provisions in some limited instances.

State Employee Indemnification Act

The State Employee Indemnification Act provides for the defense and indemnification of State[10] employees[11] named as defendants in civil suits arising from acts or omissions within the scope of their employment, unless an act or omission was intentional, willful, or wanton misconduct. For a volunteer to fall within the purview of the State Employee Indemnification Act, the volunteer must have a written agreement with a State agency concerning the volunteer activity in which he or she is engaged. Volunteers working under the auspices of units of local government will not be covered by this Act. Volunteers who assist in emergency management and planning activities, however, may be covered if their participation in such activities is reduced to writing in an agreement with a State agency. A determination of whether a volunteer qualifies for indemnification under this Act will depend on the specific facts of each case.

Line of Duty Compensation Act

The Line of Duty Compensation Act provides death benefits and burial benefits for persons serving in covered positions who are killed in the line of duty. Volunteers are generally not included in the covered positions specifically set out in section 2 of this Act (820

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[10]"State" is defined to include all agencies and instrumentalities of the State, but to specifically exclude units of local government covered by the Local Governmental and Governmental Employees Tort Immunity Act. 5 ILCS 350/1(a) (West 2004).

[11]"Employee" is defined in the State Employee Indemnification Act to apply to only select volunteers:

> [I]ndividuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, * * * individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State[.] 5 ILCS 350/1(b) (West 2004).

ILCS 315/2 (West 2005 Supp.)).[12] You have asked, however, whether members of a State or volunteer response team, when acting as individuals or affiliated with a group authorized under the Illinois Emergency Operations Plan or a local emergency operations plan, would be covered as "civil defense workers" and receive benefits pursuant to the Line of Duty Compensation Act.

Subsection 2(g) (820 ILCS 315/2(g) (West 2005 Supp.)) defines "civil defense worker," to mean:

> *any person employed by the State or a local governmental entity* as, or otherwise serving as, a member of a civil defense work force, *including volunteer civil defense work forces engaged in serving the public interest during periods of disaster*, whether natural or man-made. (Emphasis added.)

This provision was intended to extend the Act's coverage to those who volunteer services in times of disaster. Remarks of Sen. Johns, March 20, 1975, Senate Debate on Senate Bill No. 58, at 26.[13] A determination of whether a volunteer qualifies for indemnification under this Act will depend on the specific facts of each case.

Tort Immunity Act

In addition to granting immunity to qualifying "employees," the Tort Immunity Act also authorizes the indemnification of employees. Section 2-302 of the Tort Immunity Act (745 ILCS 10/2-302 (West 2004)) provides that if any claim or action is instituted against an "employee" (which, as discussed previously, may include a volunteer in qualifying circumstances) of a local public entity based on an injury allegedly arising out of an act or

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[12]Only those volunteer firemen carried on the rolls of a regularly constituted fire department are included within the definition of fireman. "Paramedic" is defined to include only those who are members of an organized body under the jurisdiction of a unit of local government; whether they volunteer in that capacity or are compensated is not a determinative factor. "State employee" is narrowly defined as those eligible for the State Employees Retirement System, excluding not only volunteers, but also elected and many appointed State officers. "Chaplains" are included only when specifically designated as such by fire and police agencies, a status not likely to be held by many emergency volunteers. A "civil air patrol member" includes volunteer members of an organization commonly known as the Civil Air Patrol.

[13]The only reported case under the Act providing for compensation of a civil defense worker involved a member of the Tolona Civil Defense Corps, who was called on to participate in a training exercise conducted during a heavy snowstorm. While responding to a call from the supervisor of the exercise to aid a motorist who was stuck in a snowbank, the corps member suffered a heart attack and died. The Illinois Court of Claims authorized an award under the Act to the corps member's widow. *In re Application of Woodworth*, 34 Ill. Ct. Cl. 298 (1981).

omission occurring within the scope of his or her employment, the entity may elect, but is not required, to indemnify the employee. Section 2-301 of the Tort Immunity Act (745 ILCS 10/2-301 (West 2004)) specifically provides that nothing in Part 3 of the Tort Immunity Act (745 ILCS 10/2-301 *et seq.* (West 2004)) relieves a local public entity of its duty to indemnify or insure its employees as provided in other enumerated statutes. *See, e.g.*, 65 ILCS 5/1-4-5, 1-4-6 (West 2004) (indemnification for injuries caused by police officer or while assisting police officer). Thus, whether a duty to indemnify extends to volunteers will depend on the statutory terms and the specific facts of each case.

CONCLUSION

Volunteers organized by and acting within the scope of the authority of a State agency or a unit of local government may potentially qualify for the protections from liability afforded by a number of Illinois laws and the Federal Volunteer Protection Act. The extent of the immunity or indemnification provided to a volunteer will depend, however, on the particular circumstances specific to each volunteer situation and the resulting applicability of particular Illinois statutes. This will require a case-by-case analysis based on the facts unique to each volunteer, the situation, and the surrounding circumstances.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,

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