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Executive Orders—Has Illinois A Strong Governor Concept?

RICHARD E. FAVORITI*

Political turmoil and an activist governor inevitably generate an increased awareness regarding the office of the governor and the powers delegated thereto. It is the purpose of this article to examine one such gubernatorial power—the governor's authority to issue a proclamation or an executive order.¹ The subject matter of executive orders and proclamations will be treated generally; major emphasis will be placed upon the power of the Illinois governor to issue these mandates in light of two recent Illinois Supreme Court decisions.²

EXECUTIVE ORDERS AND PROCLAMATIONS—HISTORICAL BACKGROUND

Executive orders and proclamations originated with the English

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1. A proclamation or executive order is a declaration promulgated by both presidents and governors to implement powers delegated to their offices by constitution or statute. Generally, such pronouncements require government officials or private citizens to act in a given way. See, e.g., Morgan, *Achieving National Goals through Federal Contracts: Giving Form to an Unconstrained Administrative Process*, 1974 Wisc. L. REV. 301, 307. Although their form and style depend upon the personal judgment of the author, statutes may partially remove individuality by prescribing the content of these mandates. See, e.g., OKLA. STAT. tit. 74, § 3304 (1973).

Executive orders or proclamations may cover a variety of subjects ranging from the most routine matters to issues of major governmental significance. The most familiar type of proclamation issued by the chief executive is ceremonial and orders the recognition and observance of special days. See, e.g., ILL. REV. STAT. ch. 6, § 16 (1973) (Citizenship Day); ILL. REV. STAT. ch. 23, § 3366 (1973) (White Cane Safety Day); ILL. REV. STAT. ch. 46, § 22-7 (1973) (Announcing Election Results).

The daily administration of governmental activities in the Executive Department may warrant the issuance of a second form of executive order. For example, an executive order may establish a procedure for designating certain officers to act in the absence of other officials serving under the supervision of the chief executive. See, e.g., VT. STAT. ANN. tit. 3, part 2, ch. 41, § 2002 (1972); State of Iowa Exec. Order No. 5, April 11, 1961, wherein the Governor of Iowa issued an Executive Order to "All State Departments" requesting that all state owned automobiles stationed and operated in the Des Moines area be "inspected." See also, Exec. Order No. 11822, 3A C.F.R. 204 (1974).

A third type of executive order may, because of certain established circumstances, go beyond the administration of government and call for action that would affect private citizens. For instance, upon a finding that a certain area is in a state of riot, insurrection or invasion, statutory or constitutional authority may permit the chief executive to promulgate a proclamation or executive order in an attempt to restore control to that area. See, e.g., ILL. REV. STAT. ch. 127, § 275 (1973); Exec. Order 11670, 37 Fed. Reg. 10431; Exec. Order No. 11776, 39 Fed. Reg. 11865.

2. *Illinois State Employees Association v. Walker*, 57 Ill. 2d 512, 315 N.E.2d 9, cert. denied, 419 U.S. 1058 (1974); *Buettell v. Walker*, 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

king. The monarch enjoyed specific prerogatives and rights which belonged only to him by virtue of his preeminent position. Certain direct prerogatives, including the authority to make war and the right to send ambassadors, were considered a part of the king's person.³ Other incidental prerogatives, for example, that no costs could be recovered against the king and that his debt was preferred to the debt of anyone else, were exceptions established from the general rules applicable to the entire kingdom.⁴

The king's direct and principal prerogatives enabled him to play a variety of roles. As the fountainhead of justice and the conservator of peace,⁵ the king possessed the power to issue binding proclamations if done to enforce the laws of the realm:

For, though the making of laws is entirely the work of a distinct part, the legislative branch of the sovereign power, yet the manner, time, and circumstances of putting those laws in execution must frequently be left to the discretion of the executive magistrate and therefore his constitutions or edicts concerning these points, which we call proclamations, are binding upon the subject, where they do not either contradict the old laws or tend to establish new ones; but only enforce the execution of such laws as are already in being, in such manner as the king shall judge necessary.⁶

Unlike the king, the governor's authority to issue a proclamation or an executive order is not rooted in his position or incidental to his political person. Unknown to the common law, the office of governor was created by state constitution to head the executive department of the state.⁷ Reacting to the arbitrary and powerful colonial governors preceding the American Revolution, the legislatures of the newly established states expressed their suspicion and fear of the governor's office by constitutionally limiting the authority of the executive branch.⁸ In contrast to the king, the governor possessed only those powers delegated to him by state constitution or state statute, and such powers were additionally limited in that they could be exercised only in the manner provided.⁹ Although the prestige and influence of the governor increased with time and the growing complexity of state government,¹⁰ the governor, in a consti-

3. W. BLACKSTONE, 1 COMMENTARIES ON THE LAW OF ENGLAND 240 (3rd ed. T. Cooley 1884).

4. *Id.*

5. *Id.* at 266.

6. *Id.* at 270.

7. *Royster v. Brock*, 258 Ky. 146, 79 S.W.2d 707 (1935).

8. W. ANDERSON, C. PENNIMAN, E. W. WEIDNER, GOVERNMENT IN THE 50 STATES 258-59 (1960); C.O. JOHNSON, H. CASTLEBERRY, T. SWANSON, D. M. OGDEN, JR., AMERICAN STATE AND LOCAL GOVERNMENT 33 (4th ed. 1965).

9. *Royster v. Brock*, 258 Ky. 146, 79 S.W.2d 707 (1935).

10. C.B. ADRIAN, GOVERNING OUR 50 STATES AND THEIR COMMUNITIES 32 (3rd ed. 1972); W.

tutional framework, has never regained those executive powers once held by the king. Parallel to the office of the President,¹¹ the governor's authority to issue an executive order or proclamation is based on either: (1) broad or specific constitutional grants of power;¹² or (2) general or specific statutory authority.¹³

CONSTITUTIONAL AUTHORITY

Most state constitutions place the "supreme executive power,"¹⁴ the "chief executive power,"¹⁵ or the "executive power"¹⁶ in the office of the governor, and frequently clothe their chief executive with the responsibility to "take care that the laws be carefully executed."¹⁷ Whether these terms in and of themselves grant the necessary authority to the governor to issue a proclamation or an executive order is the subject of divided opinion.

In a "strong governor" jurisdiction, provisions granting, delegating, or vesting the executive power of the state in the governor are, in themselves, general grants of executive power. All specific grants of constitutional power appearing thereafter are merely directions or mandates as to the manner in which the general grants of power

ANDERSON, C. PENNIMAN, E.W. WEIDNER, *GOVERNMENT IN THE 50 STATES* 265-66 (1960).

11. Certain notable differences appear between presidential and gubernatorial utilization of executive orders and proclamations. First, because the office of the governor is, in comparison to that of the President, far more restricted in terms of the powers delegated to it, executive orders and proclamations issued by the latter may and do cover a greater magnitude of subjects. *See generally* C.R. ADRIAN, *GOVERNING OUR 50 STATES AND THEIR COMMUNITIES* 36-37 (3d ed. 1972). Secondly, executive orders or proclamations issued by the President currently appear numerically in the Federal Register and the U.S. Code Congressional and Administrative News. Additional information regarding presidential proclamations also appears in the United States Statutes at Large. *See generally* W.F. SWINDLER, *COURT AND CONSTITUTION IN THE 20TH CENTURY - THE NEW LEGALITY* 419-20 (1970).

Some states require partial publication of executive orders. *See, e.g.,* MD. ANN. CODE art. 41, § 15CE (1974 Supp.); VT. STAT. ANN. tit. 3, part 2, ch. 41, § 2002 (1972) and Appendix to title 3. Illinois does not statutorily mandate publication of executive orders or proclamations issued by the Governor. Although ILL. REV. STAT. ch. 124, § 6a (1973), authorizes the Secretary of State to provide for the publication of these pronouncements, no such publication is available to the general public. Instead, any executive order or proclamation issued by the Governor is numbered and filed with the Secretary of State's office. In order for a citizen to obtain a copy of a gubernatorial executive order or proclamation, he must first obtain the number of the pronouncement desired. Unfortunately, there is no index readily available that could be of assistance to an individual in finding this reference number. Once the number of the executive order or proclamation has been uncovered, a request can be placed with the Secretary of State's office at which time a copy of the document will be forwarded.

12. ALA. CONST., art. 5, § 122 (1901).

13. COLO. REV. STAT. ANN. §§ 24-11-104 through 24-11-107; COLO. REV. STAT. ANN. §§ 24-20-108 and 24-20-201.

14. ILL. CONST. art. V, § 8.

15. VA. CONST. art. V, § 1.

16. IND. CONST. art. V, § 1.

17. ALA. CONST. art. V, § 120; MINN CONST. art. V, § 4.

are to be exercised.¹⁸ Hence, in such jurisdictions, the general provisions alone would authorize the governor's promulgation of an executive order or proclamation.

Other jurisdictions,¹⁹ particularly Illinois, have traditionally taken an opposite view regarding the meaning of these same general provisions. For more than a century, Illinois' resolution of this question was contained in the 1839 decision of *Field v. People ex rel. McClermand*.²⁰ The Illinois Supreme Court in *Field*²¹ confronted the question of whether general language in the state constitution supported the governor's removal of the Secretary of State from office and the appointment of a successor at will.

Arguments in support of the governor's implied power to act centered upon five sections of the Illinois Constitution of 1818, two of which provided:

The executive power of the state shall be vested in a governor.²²

He, the governor, may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.²³

In determining whether there was authority for the governor's action, the court admitted that in addition to those powers expressly granted in the constitution, other powers, necessary to implement the express authority provided, may be implied therefrom and conferred upon the chief executive.²⁴ The court stated that as a general rule whenever a constitution expressly grants a power or enjoins a duty, it also gives by implication that particular power necessary for the exercise of the one or the performance of the other.²⁵ Thus, the doctrine of implication must be predicated upon a grant of express power.

Looking to the sections advanced in support of the governor's action, the Illinois Supreme Court stated that certain provisions, including article III, section I²⁶ and article III, section 7,²⁷ were mere

18. See *Tucker v. State*, 218 Ind. 614, 35 N.E.2d 270 (1941).

19. *Holder v. Anderson*, 160 Ga. 433, 128 S.E. 181 (1925); *State v. Iron Cliffs Company*, 54 Mich. 350, 20 N.W. 493 (1884); *Territory ex rel. Wade v. Ashenfelter*, 4 N.M. 85 (Johnson), 12 P. 879 (1887); *Fulmore v. Lane*, 104 Tex. 499, 140 S.W. 405 (1911).

20. 3 Ill. (2 Scammon) 79 (1839).

21. *Id.*

22. ILL. CONST. art. III, § 1 (1818).

23. ILL. CONST. art. III, § 7 (1818).

24. *Field v. People ex rel. McClermand*, 3 Ill. (2 Scammon) 79, 83 (1839).

25. *Id.*

26. *Id.* at 84.

27. *Id.* at 90-91.

declarations of fundamental governmental principles which conferred no express powers upon the governor. Since no powers had been expressly granted, no additional powers could be implied therefrom.

For more than a century the *Field*²⁸ decision and its interpretation of the constitutional provisions considered therein remained virtually untouched. The opportunity to re-examine the vitality of *Field*²⁹ took place on August 20, 1973, when Illinois Governor Daniel Walker pronounced his Executive Order No. 5 (1973).³⁰ This order mandated "suppliers" of certain state agencies and "regulated businesses" to file statements with the Illinois Department of Finance disclosing contributions made by these organizations and certain defined "key persons" to: (1) any candidate for state public office; (2) any elected official holding state public office; and (3) any organization, committee, fund, party, or other entity which gave anything of value to a candidate for state public office. The order required that the initial disclosure statement reveal those contributions made during the preceding 24 months. Individuals or entities who continued to be "suppliers" or "regulated businesses" were required to disclose their respective lists of contributions by filing statements on a semi-annual basis.

Reaction to Executive Order No. 5 was immediate and adverse. On September 11, 1973, an action was filed in the Circuit Court of Cook County, Illinois, Chancery Division, seeking *inter alia*, to restrain the governor and the Director of the Department of Finance from enforcing Executive Order No. 5.³¹ On September 21, 1973, the trial court concluded that the governor was without authority to act in this regard and that Executive Order No. 5 exceeded the authority of the executive department, constituted legislation, and violated the doctrine of separation of powers. Plaintiffs' request for a preliminary injunction was granted. An interlocutory appeal, taken by defendants, was brought directly to the Illinois Supreme Court pursuant to Rule 302(b).³²

Recognizing that the plaintiffs' attack covered a broad range, the Illinois Supreme Court in *Buettell v. Walker*,³³ ruled that Executive Order No. 5 did not violate the right to privacy³⁴ or the equal protec-

28. 3 Ill. (2 Scammon) 79 (1839).

29. *Id.*

30. Exec. Order No. 5 appears in Appendix 2.

31. Illinois State Chamber of Commerce v. Walker, 73 Ch. 5366, Report of Proceedings, September 21, 1973, Judge Walter P. Dahl presiding.

32. ILL. REV. STAT. ch. 110A, § 302(b) (1973).

33. 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

34. U.S. CONST. amend. IV; ILL. CONST. art. I, §§ 6, 12 (1970).

tion³⁵ clauses of the federal and Illinois Constitutions. However, the court noted that the case stood otherwise with respect to the authority of the governor to promulgate Executive Order No. 5.

The court examined provisions of the Illinois Constitution to determine whether the governor had the authority to issue Executive Order No. 5: (1) article V, section 8; and (2) article XIII, section 2. Noting that Executive Order No. 5, on its face, purported to be a gubernatorial exercise of authority independently derived from the State Constitution and not the exercise of a delegated power, the Illinois Supreme Court ruled that the authority to issue this pronouncement did not fall within article V, section 8 and affirmed the order entered by the lower court.

Although apparently following Mr. Justice Wilson's reasoning in *Field*,³⁶ dicta in the *Buettell*³⁷ decision marks a possible departure from *Field*.³⁸ The court stated that the purpose of Executive Order No. 5 was to formulate a new legal requirement rather than to execute an existing one. This implies that the duty to "execute the laws" in article V, section 8, is a grant of an express power. Hence, if the purpose of issuing an executive order is to execute a legal requirement, and there is no express power to issue this order, power, nevertheless, may be implied from the general grant of power delegated to the governor in article V, section 8.

The Illinois Supreme Court in *Field*³⁹ held that provisions vesting the executive power of the state in the governor and provisions delegating to him the responsibility to take care that the laws of the state are faithfully executed were mere declarations of fundamental principle and did not confer a specific power. Similar language in article V, section 8 of the 1970 Illinois Constitution should receive treatment consistent with *Field*.⁴⁰ However, the court's implicit suggestion that the chief executive has the power to issue executive orders which have binding force when that officer seeks to execute the laws, marks a dramatic shift from *Field*⁴¹ toward a "strong governor" concept in Illinois.

The court also considered article XIII, section 2, of the new Illinois Constitution regarding the governor's power to issue an executive order:

35. U.S. CONST. amend. XIV; ILL. CONST. art. I, § 2 (1970).

36. 3 Ill. (2 Scammon) 79 (1839).

37. 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

38. 3 Ill. (2 Scammon) 79 (1839).

39. *Id.*

40. *Id.*

41. *Id.*

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests, as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch.

The Illinois Supreme Court unequivocally ruled that the authority to issue Executive Order No. 5 could not be found within article XIII, section 2:

The power granted by that provision does not, in our opinion, include the power to establish and enforce ethical standards for persons doing business with the executive branch. The present order does not regulate the conduct of officers and employees of the executive branch. Instead, its impact, including its sanctions, is upon third persons who are not a part of State government. It does not therefore fall within the authority granted by section 2 of article XIII.⁴²

This part of the court's opinion refers to a prior Illinois decision, *Illinois State Employees Association v. Walker*,⁴³ wherein the supreme court sustained Governor Walker's issuance of Executive Order No. 4 (1973)⁴⁴ as a proper exercise of the power granted to the state chief executive in article XIII, section 2. Executive Order No. 4 required state employees falling within any one of three specified categories⁴⁵ to file sworn Statements of Economic Interest together with their most recent federal and state income tax returns at the commencement of state service and thereafter at fixed intervals.⁴⁶

Three separate actions⁴⁷ were filed in the Circuit Court of Sanga-

42. 59 Ill. 2d 146, 154, 319 N.E.2d 502, 506 (1974).

43. 57 Ill. 2d 512, 315 N.E.2d 9, *cert. denied*, 419 U.S. 1058 (1974).

44. The full text of Exec. Order No. 4 appears in Appendix 1.

45. These categories include:

- (a) each person appointed by the governor;
- (b) each person who receives \$20,000.00 or more per year from the State; and
- (c) each other person whose position is subject to undue influence, as determined from time to time by rule of the Board of Ethics.

46. See Appendix 1.

47. *Illinois State Employees Association v. Walker*, No. 365-73; *Illinois Association of Highway Engineers v. Walker*, No. 366-73; *Troopers Lodge No. 41, Fraternal Order of Police v. Walker*, No. 379-73.

mon County, each seeking a declaration that, *inter alia*, Executive Order No. 4 (1973) be declared illegal, unconstitutional,⁴⁸ and unenforceable against the plaintiffs⁴⁹ and all persons similarly situated. Excepting certain invalidated portions of the order, the trial court entered judgment, sustaining the overall validity of Executive Order No. 4. Pursuant to Rule 302(b)⁵⁰ an appeal was brought directly to the Illinois Supreme Court.

The court first considered the power of the governor to promulgate Executive Order No. 4 upon the authority granted to the governor in article XIII, section 2. Mr. Justice Schaefer, speaking for a majority of the court, stated that the “. . . source of authority of the executive branch with respect to ethical standards and statements of economic interests has been section 2 of article XIII”⁵¹ and held that this provision empowered the governor to issue Executive Order No. 4. However, the court indicated that this provision was not without limitation. The court focused upon article V of the previously repealed Illinois Governmental Ethics Act.⁵² That statute had given limited authority to the governor and each elected state official in the Executive Department to promulgate detailed codes of conduct for appointed officers and employees under their respective jurisdictions. The court implied that article XIII, section 2 carries with it the same limitation contained in this obsolete section of the Ethics Act. Further support for the court’s implicit restriction of the power contained within article XIII, section 2, is found in the remarks of Delegate Canfield at the 1970 Constitutional Convention:

I think that we have to depend on the governor to set up his own methods of control of his directors, who are under his immediate supervision.

The elected officers . . . are only under the supervision of the people. The governor can’t enforce a standard of conduct with

48. The plaintiffs challenged Executive Order No. 4 (1973) on six grounds in that it unconstitutionally: (a) invaded the right to privacy; (b) violated Illinois statutes and the constitution; (c) went beyond the power of the governor to issue such an order; (d) discriminated between members of the same class; (e) was unduly vague; and (f) violated due process.

49. The plaintiffs involved in the 3 actions were: (a) individual state employees and the Illinois State Employees Association; (b) individual highway engineers and the Illinois Association of Highway Engineers; and (c) individual members of the State Highway Police and Trooper Lodge No. 41, Fraternal Order of Police.

50. ILL. REV. STAT. ch. 110A, § 302(b) (1973).

51. 57 Ill. 2d 512, 518, 315 N.E.2d 9, 12 (1974), *cert. denied*, 419 U.S. 1058 (1974).

52. Art. V, repealed by Public Act 77-1806, effective January 24, 1972. See ILL. REV. STAT. ch. 127, §§ 605-101 *et seq.* (1973).

them. In his own directed department he's got the responsibility and duty of doing it . . .⁵³

A third possible constitutional source authorizing the issuance of an executive order is article V, section 11, which states:

The Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him. If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly. If the General Assembly is in annual session and if the Executive Order is delivered on or before April 1, the General Assembly shall consider the Executive Order at the annual session. If the General Assembly is not in annual session or if the Executive Order is delivered after April 1, the General Assembly shall consider the Executive Order at its next annual session, in which case the Executive Order shall be deemed to have been delivered on the first day of that annual session. Such an Executive Order shall not become effective if, within 60 days after its delivery to the General Assembly, either house disapproves the Executive Order by the record vote of a majority of the members elected. An Executive Order not so disapproved shall become effective by its terms, but not less than 60 calendar days after its delivery to the General Assembly.

This provision, contained in the 1970 Illinois Constitution, is new to Illinois government. Chairman Tecson, at the 1970 Constitutional Convention, commented that the powers granted to the governor in article V, section 2, like the powers granted in article XIII, section 2, are limited to those individuals directly responsible to the governor:

It's a device which is new to the state of Illinois. It [is] present in other states in their constitutions, and the purpose of this section is to give authority to the governor to reorganize agencies which are directly responsible to him. It in no way touches upon or impinges upon the authority of other elected officers. It in no way touches upon or impinges upon quasi-judicial or quasi-legislative boards—for example, the Commerce Commission or the Industrial Commission. It is designed mostly to assist the governor in his duty as chief executive to help realign functions, mostly in his code departments. It is not intended to create any authority or to remove any authority.⁵⁴

Plaintiffs in *Illinois State Employees Association*⁵⁵ contended,

53. RECORD OF PROCEEDINGS, SIXTH ILL. CONST. CONVENTION, Vol. III at 1753 (1969-70) (verbatim transcripts).

54. *Id.* at 1327.

55. 57 Ill. 2d 512, 315 N.E.2d 9, cert. denied, 419 U.S. 1058 (1974).

based upon article V, section 2, that Executive Order No. 4 was invalid because it had not been submitted to the General Assembly before it became effective. However, plaintiffs failed to identify any statute contravened by Executive Order No. 4 and, the court, unaware of any such statute, ruled that this Executive Order did not violate article V, section 11.

Finally, article II, section 1 and article II, section 2 may be suggested as additional sources of constitutional authority for the governor's issuance of an executive order or proclamation. Article II, section 1 provides:

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

However, the drafters of the 1970 Constitution commented that this provision is not intended to grant any power to the governor, but merely reiterates the separation of powers doctrine fundamental to our system of government:

We do not intend in any way to change the purport of the article. We recognize that probably there is no [real] need to have an article on the separation or distribution of powers. However, this is such an essential and traditional part of our form of government, and it is a part of nearly every constitution of this country. We therefore felt that it would be appropriate—and as a traditionalist I feel it is almost essential—to have an expression of the basic principle upon which our government works.⁵⁶

Article II, section 2, of the Illinois Constitution of 1970, another new provision, states that “[t]he enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.” The Constitutional Commentary indicates that:

Section 2 was probably intended, in part, to supercede the case of *Field v. People ex rel. McClelland*, 3 Ill. 79 (1839), which held that a constitution is a limitation on the power of the legislative branch of government, but a grant of powers (with the attendant problems of strict construction) to the executive and judicial branches.⁵⁷

It is submitted that this provision does not limit or supercede that part of the *Field*⁵⁸ decision pertaining to general declaratory sections of the Illinois Constitution and the inability to imply other powers therefrom. The application of this section, by its own language, is

56. RECORD OF PROCEEDINGS, SIXTH ILL. CONST. CONVENTION, Vol. II at 1067 (1969-70) (verbatim transcripts).

57. R. Helman & W. Wahlen, Const. Commentary 48, S.H.A., art. II, § 2.

58. 3 Ill. (2 Scammon) 79 (1839).

limited to the "enumeration . . . of specified powers and functions" ⁵⁹ If a particular section of the constitution speaks only in general declaratory terms and grants no specific power, it would appear that article II, section 2, would leave the language of that provision unaffected and, in light of the position adopted by the Illinois Supreme Court in *Field*, ⁶⁰ prohibit an implication of power in the absence of an express grant. On the other hand, if there has been a judicial declaration that a particular constitutional provision specifies a power or function, then article II, section 2 would apply. If the dicta in *Buettell* ⁶¹ suggests that article V, section 8 is more than the mere declaration of a general principle, then, article II, section 2, would support an implication of additional powers flowing from article V, section 8.

STATUTORY AUTHORITY

In addition to those powers delegated to the governor by state constitution, statutes, either generally or specifically, act as a further basis for the issuance of an executive order or proclamation. Without any reference to executive orders or proclamations, a statute may describe the duties of the governor in such a way as to indicate or imply that he has been given powers separate and apart from those provided by the state constitution. ⁶² For example, the Maryland Code provides:

The head of the Executive Department shall be the Governor of the State, who in addition to the rights, powers, duties, obligations, and functions now or hereafter conferred by law, shall also have supervision and direction over the officers and agencies hereby or hereafter assigned to the Executive Department. ⁶³

Arguably, such duties could be executed through the issuance of an executive order or proclamation. On the other hand, a statute may expressly provide the chief executive of the state with the power to issue proclamations or executive orders for specific purposes. Matters involving the environment, ⁶⁴ governmental administration ⁶⁵ and

59. ILL. CONST. art. II, § 2 (1970).

60. 3 Ill. (2 Scammon) 79 (1839).

61. 59 Ill. 2d 146, 319 N.E.2d 502 (1974).

62. IOWA CODE § 8.3 (1) (2) (1966); R.I. GEN. LAWS ANN. § 42-7-1 (1956) provides: There shall be an executive department. The head of the executive department shall be the governor. The governor shall have all powers and duties provided by article VII of the Constitution, by article XV of amendments to the Constitution and by chapter 1 of title 43, and as further prescribed in all general laws relating to powers and duties of the governor.

63. MD. ANN. CODE art. 41, § 15 (1957).

64. COLO. REV. STAT. ANN. § 24-20-108 (1973); DEL. CODE ANN. tit. 29, § 2111 (rev. 1974).

65. OKLA. STAT. tit. 74, § 3303 (1973).

civil disobedience⁶⁶ are typical examples of such legislation.

There is a paucity of Illinois statutory authority expressly granting or implying the power to issue gubernatorial proclamations or executive orders.⁶⁷ Although it has been suggested that the lack of statutory authority in this regard points to the inherent power implicit within the constitutional provisions pertaining to the governor, the obvious absence of such statutory authority evidences the legislature's reluctance to grant this type of power, and emphasizes the restrictions placed upon the office of the State's chief executive.

CONCLUSION

Traditionally, the governor's powers, compared to the powers of the nation's chief executive, are limited. Characterized as a position of limited discretion, whatever power is to repose in the office of the governor must initially find its roots in either the state constitution or a state statute.

A proclamation or executive order is a tool available to the governor in implementing the powers delegated to that office. Although such pronouncements may cover a variety of subjects, their genesis, like that of all action taken by a state's chief executive, must lie in either broad or specific constitutional or statutory authority.

Just exactly how that authority has been defined varies among the states. Some jurisdictions have adopted a "strong" governor concept, while others advocate a traditional "weak" governor concept. Regardless of how a particular jurisdiction interprets the powers of its governor, *i.e.*, strong or weak, the essence of state government, especially with its increasing complexity and departmentalization of services, demands well-defined perimeters of gubernatorial authority.

As was demonstrated more than 100 years ago by the *Field* decision, Illinois views the governor's office as one of limited authority. Recent controversies, involving the chief executive's use of executive orders, have provided the judiciary a vehicle to assist in defining the scope of the governor's authority. However, rather than clarifying the boundaries of delegated power to this office, the Illinois Supreme Court, especially in *Buettell*, has not only clouded this controversial area, but also has dramatically diluted an apparently firmly established principle of Illinois government.

66. COLO. REV. STAT. ANN. § 24-20-201 (1973); IDAHO CODE, § 19-227 (1947).

67. Examples of what little authority there is can be found in the Emergency Powers of the Governor, ILL. REV. STAT. ch. 123, § 7 (1973); and in the Militia Powers, ILL. REV. STAT. ch. 129, § 220.03 (1973).

Appendix I

EXECUTIVE ORDER NO. 4

Ethics Disclosure

The people of the state are entitled to a high standard of candor from their public servants. The public's right to know must take precedence over the citizen's right of privacy for purely personal affairs when the citizen becomes a public official. Accordingly, I hereby order:

1. There is created a Board of Ethics consisting of three members appointed by the governor to serve at his pleasure. The governor shall, from time to time, designate one member as chairman. The members of the board shall receive no compensation for their services.
2. The board shall have jurisdiction over each agency whose vouchers are subject to approval of the Department of Finance.
3. At the commencement of state service and thereafter between April 15 and April 30 of each succeeding year, each of the following persons in each agency subject to the jurisdiction of the board shall file with the board a sworn Statement of Economic Interest and a copy of his most recent federal and state income tax returns:
 - a. Each person appointed by the governor;
 - b. Each person who received \$20,000 or more per year from the state; and
 - c. Each other person whose position is subject to undue influence (as determined from time to time by rule of the board).
4. The Statement of Economic Interest shall contain:
 - a. A current net worth statement, disclosing all assets and liabilities of the person;
 - b. A statement of income (including capital gains) received by the person during the preceding calendar year, disclosing:
 1. each source of income,
 2. the total amount received from the source, and
 3. the nature of the income transactions involving the source.

To provide this information, pertinent portions of federal or state income tax returns shall be made part of the State of Economic Interest;

- c. A statement of gifts received by the person during the preceding calendar year, disclosing all gifts from any source having business with or regulated by the agency of the person and all gifts of a value of \$50 or more from sources other than members of the person's family.
- d. A statement of close economic associations, indicating the person's position with each business or professional entity with which the person is associated as an officer, employe, director or partner or in

which he has a substantial interest and identifying those entities which derive substantial income from the state or from professional engagements concerning the state.

5. The statement of Economic Interest of each person other than one appointed from the public to serve on a board or commission shall be open to reasonable public inspection. The board shall provide by rule for the time, place and manner of inspection.
6. Subject to rule of the board, the Statement of Economic Interest shall disclose interests of the spouse and immediate family living with the person making the statement.
7. The failure to make timely filing of a required document, the making of a false or misleading statement or an omission in a document, and the failure to cooperate with the board shall be grounds for disciplinary action, including discharge.
8. The board shall review the documents filed with it, and receive information from the public. The board shall make investigations and reports to the governor upon finding an apparent conflict of interest or other impropriety, and may recommend remedial action against the person involved.
9. The board shall make rules to carry out and enforce this order. The board shall prepare readily understandable instructions and offer reasonable assistance to persons subject to this order. The board shall cooperate with the secretary of state to reduce duplication of effort by persons who are required to make disclosure under both this order and the Governmental Ethics Act.
10. This order is effective upon filing with the secretary of state and shall remain in full force and effect unless amended or revoked by executive action. For 1973, the filings required under paragraph 3 shall be made by May 30, 1973, or earlier if so provided by rule of the board. Paragraph 13 of Executive Order No. 2, 1971, pertaining to disclosure, and the rules and regulations of the Department of Personnel implementing that paragraph are superseded.

Appendix II

EXECUTIVE ORDER NO. 5

Disclosure of Political Contributions

For too long the relationship between political contributions and state business has been shrouded in secrecy. The public is entitled to the assurance that the state's decisions to buy or build are made on the proper basis or price, service and quality; that decisions in regard to regulated businesses are based on the public interest.

Suppliers to the state and businesses regulated by the state, together with their key officials, should not be precluded from participating in the political process through any proper means, including political contributions where the law so permits. But, it is time to make this financial participation a matter of public record. The certainty of public exposure will deter the making of contributions for improper purposes and assure people that government decisions are not made on the basis of political favoritism.

In today's climate, extraordinary steps are required to restore public confidence in government. It is appropriate that the powers of the Executive be used to the fullest extent possible to achieve this goal.

Accordingly, I hereby order:

1. For purposes of this Order:
 - A. "State Agency" means any executive department, commission, board or agency whose vouchers are subject to approval by the Department of Finance; any board, commission, agency or authority which has a majority of its members appointed by the Governor; and the Governor's Office.
 - B. "Purchase Transaction" means a purchase, or a contract to purchase, goods or services of any kind by a State agency.
 - C. "Supplier" means any individual, firm, corporation, association, partnership, joint venture, sole proprietor or other business entity which is prequalified to enter, or which enters into, a "purchase transaction" with a State agency.
 - D. "Regulated Business" means any individual, firm, corporation, association, partnership, joint venture, sole proprietor or other business entity which is prequalified to enter, or which enters into, a "purchase transaction" with a State agency.
 - D. "Regulated Business" means any individual, firm, corporation, association, partnership, joint venture, sole proprietor or other business entity regulated or licensed, or applying to be regulated or licensed, by the Department of Insurance, the Department of Financial Institutions, the Department of Mines and Minerals excepting individuals or business entities regulated only under Chapter 93, Sections 143-156 (which relates to explosives) and Chapter 104, Section 63.1 (which relates to water wells), the Commissioner of Banks and Trust Companies, the Commissioner of Savings and Loan Asso-

ciations, the Illinois Liquor Control Commission, the Illinois Racing Board or the Illinois Commerce Commission.

- E. "Key Person" means (i) any officer, director, partner, proprietor, managing agent or owner (legal or beneficial) of more than 7 1/2 percent of any supplier or regulated business, (ii) any lobbyist representing such supplier or regulated business who is required to register under the Lobbyist Registration Act; and (iii) any other person or entity acting at the direction of any person referred to in subparagraph 1 (E) (i) — (ii).
- F. "Political Contribution" means any gifts of money, stocks, bonds, goods, property, commercial services or anything else of value to
- i) any candidate for State public office;
 - ii) any elected official holding State public office;
 - iii) any organization, committee, fund, party or other entity giving money, stocks, bonds, goods, property, commercial services or anything of value to or on behalf of any candidate for State public office.
- G. "State Public Office" means all the legislative and executive offices established under Articles IV and V of the Illinois Constitution.
2. Each individual or business entity which is or becomes a supplier or regulated business prior to September 15, 1973, shall, on or before September 15, 1973, file with the Department of Finance a Statement of Political Contributions and thereafter shall file such Statement as required by rules issued by the Department of Finance pursuant to this Order, but no less often than semi-annually. Each individual or business entity which becomes a supplier or regulated business on or after September 15, 1973, shall file a Statement of Political Contributions at, or immediately prior to, the time such individual or business entity becomes a supplier or regulated business and thereafter shall file such Statement as required by rules issued by the Department of Finance pursuant to this Order, but no less often than semi-annually. No supplier shall be eligible to enter into a purchase transaction unless such Statement has been filed in accord with this Order and the rules issued by the Department of Finance pursuant thereto.
3. The Statement of Political Contributions shall be under oath and shall include the date, amount, donor, donee, and nature of every political contribution and the date, amount, lender, borrower, terms and extent of repayment of any loan (other than one made by a lending institution) to any individual or entity referred to in subparagraph 1 (F) (i) — (iii) of this Order made within the 24 month period prior to the date of filing of the Statement (i) by the supplier or regulated business directly or through any trade or industry association and (ii) by any key person of that supplier or regulated business; provided, however, that any Statement required to be filed on or before September 15, 1973, shall set forth the required information for the 24 month period prior to the effective date of this Order and for the period from the date of this Order through the date of filing.

4. The Department of Finance shall, from time to time, as may be necessary and appropriate, issue rules to implement and enforce this Order.
5. Each Statement of Political Contributions filed under this Order shall be open to reasonable public inspection in accord with rules issued by Department of Finance pursuant hereto as to the time, place and manner of inspection.
6. This Order is effective upon filing with the Secretary of State and shall remain in full force and effect unless amended or revoked by Executive action.

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