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SPRINGFIELD

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FILE NO. S-1495

PENSIONS:

Local Libraries Are Not  
"Instrumentalities" Within the  
Meaning and Intent of the Illinois  
Social Security Enabling Act

Michael L. Mory, Secretary  
State Employees' Retirement System of Illinois  
Social Security Unit  
1201 South Fifth Street  
Springfield, Illinois 62706

Dear Mr. Mory:

I have your letter wherein you inquire whether the employees of the Marissa Public Library are employees of the village of Marissa within the meaning and intent of the Illinois Social Security Enabling Act (Ill. Rev. Stat. 1978 Supp., ch. 108 1/2, par. 21-101 et seq.) so as to be included for coverage under a March 24, 1955, agreement approved by the Social Security Administration effecting Social Security coverage as of January 1, 1955, for the employees and elected officials in the executive class of the village of Marissa pursuant to the provisions of the Illinois Social Security

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Enabling Act and section 213 of the Federal Social Security Act (42 U.S.C.A. § 413). According to your letter, the wages of the aforementioned library employees are not being reported in the Marissa quarterly Social Security wage reports. Nor have the appropriate taxes been paid on that income as you contend they should be. The Marissa village library board has taken the position that it is a separate and independent entity apart from the village of Marissa, with no obligation to report or to pay into the retirement system pursuant to the Marissa village Social Security agreement. For the reasons hereinafter stated, it is my opinion that under section 21-107 of the Illinois Social Security Enabling Act (Ill. Rev. Stat. 1978 Supp., ch. 108½, par. 21-107), the Marissa village library is part of the village and consequently, the employees of said library are included for coverage under the aforementioned village agreement.

You have informed me that the Marissa Public Library is a village library organized pursuant to the Local Library Act (Ill. Rev. Stat. 1979, ch. 81, par. 1-0.1 et seq.). In order to resolve the question you pose, it is necessary to determine the status of the Marissa Public Library under the Illinois Social Security Enabling Act (Ill. Rev. Stat. 1978 Supp., ch. 108 1/2, par. 21-101 et seq.). If the Marissa Public Library is part of the village

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of Marissa for the purposes of the Illinois Social Security Enabling Act, the library employees are included for coverage under the village agreement and are required to report and contribute into the System in accordance with section 21-120(a) of the Act. If it is not, the library could elect coverage at its own option, which it has not done. Section 21-120(a) provides that:

"Every employee of the State of Illinois or of any political subdivision thereof whose services are covered by an agreement entered into under 'The 1951 Act' or this Article shall be required to pay for the period of such coverage, into the Social Security Contribution Fund established by 'The 1951 Act' or this Article \* \* \*."

Under section 21-119 of the Act (Ill. Rev. Stat. 1979, ch. 108½, par. 21-119):

"The State Agency is authorized to enter on behalf of the State of Illinois into an agreement with the Secretary, consistent with the terms and provisions of 'The 1951 Act' or this Article, for the purpose of extending the benefits of the Federal Social Security insurance program to employees of the State of Illinois, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing, or to members of a Retirement System, with respect to services specified in such agreement, which constitute 'employment' \* \* \*." (Emphasis added.)

The term "political subdivision" is defined in section 21-106 of the Act as:

"Any county, township, municipal corporation, school district, park district, road district, sanitary district, library district, library system, or other independent governmental entity." (Emphasis added.)

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Because the Marissa Public Library is organized pursuant to the aforementioned Local Library Act, it is neither a library district organized pursuant to the Illinois Public Library District Act (Ill. Rev. Stat. 1979, ch. 81, par. 1001-1 et seq.) nor a library system which is organized pursuant to the Illinois Library System Act (Ill. Rev. Stat. 1979, ch. 81, par. 111 et seq.). Since it is not statutorily authorized to levy taxes, it cannot qualify as an independent governmental entity. Thus, it is not a political subdivision as defined in the Act.

"Municipality" is defined in section 21-108 as follows:

"Any city, village, incorporated town, county; and any school, park, sanitary, road, forest preserve, water, fire protection, public health, river conservancy, mosquito abatement, tuberculosis sanitarium, library district, or other local district authorized to levy taxes on property within such district: now existing or hereafter created within the State."

Clearly, the above definition of "municipality" includes the village of Marissa and excludes the Marissa local library board.

Consequently, for purposes of determining if the Marissa Public Library is governed by the village agreement, it becomes necessary to determine if it is an "instrumentality" within the meaning of the Act. The term "instrumentality" is defined in section 21-107 of the Social Security Enabling Act as follows:

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"Instrumentality': A juristic entity which is legally separate and distinct from the State of Illinois and its political subdivisions and whose employees are not by virtue of their relation to such juristic entity employees of the State of Illinois or such political subdivisions." (Emphasis added.)

As you note in your letter, Attorney General Castle, in an opinion issued October 28, 1953, advised that a township library, which is organized under the Local Library Act, was not legally separate and distinct from the township and consequently not an instrumentality as defined by the Social Security Enabling Act. That determination was based on the fact that the electors of the township (changed to board of town auditors [now trustees] in 1969) levied the library tax. Therefore, the library employees would be covered for Social Security purposes as township employees, but not as library employees. In that opinion, Attorney General Castle also advised that the tax for such a public library is to be collected in like manner with other general taxes of the township.

In 1965, the General Assembly created the Local Library Act (1965 Laws 1402) therein, section 3-5 provided specifically that:

"The library taxes provided for in this article shall be levied and collected in like manner with other general taxes of the city, village, incorporated town or township and the proceeds shall be deposited in a special fund, which shall be known as the library fund.  
\* \* \* "

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However, in 1969, section 3-5 was further amended (P.A. 76-662, effective August 6, 1969) so as to presently provide that:

"The library taxes provided for in this Act shall be levied by the corporate authorities in the amounts determined by the board and collected in like manner with other general taxes of the city, village, incorporated town or township and the proceeds shall be deposited in a special fund, which shall be known as the library fund." (Emphasis added.)

Now, you inquire whether the 1969 amendment which requires the corporate authorities to appropriate and levy "in the amounts determined by the board" in any way alters the determination made in the aforementioned 1953 opinion that, based on its lack of tax levying authority, a library organized under the Local Library Act is not an "instrumentality" for the purpose of securing Social Security coverage.

In order to make the present determination of whether the Marissa Public Library is legally separate and distinct from the village of Marissa, it becomes necessary to analyze its status under statutes authorizing its creation. (Ill. Rev. Stat. 1979, ch. 81, par. 1-0.1 et seq.) The powers and duties granted a local library under the Act are broad. Most notably, and in addition to the other powers conferred by the Act, the village board of library

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directors has exclusive control of the expenditure of all moneys collected for the library and deposited to the credit of the library fund. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(2).) The library board has exclusive control of the construction of library buildings and the care and custody of library property. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(3).) The library board may sell personal or real property belonging to the library. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(6).) Moreover, the board is statutorily authorized to enter into contracts, to take title to any property acquired for library purposes, and to sue and be sued. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(10).)

However, despite the considerable independent authority found in the statutes, the library board is not specifically designated as a body politic or corporate. It does not have the authority to exercise the power of eminent domain without the prior approval of the corporate authorities. (Ill. Rev. Stat. 1979, ch. 81, par. 4-7(13).) And, while section 3-5 makes it clear that the library board determines the amount of taxes to be levied for library purposes, the corporate authorities still retain the actual tax levying authority. Absent any specific statutory language indicating an intent to the contrary, coupled with the withholding of the power to levy taxes, I am not persuaded that the General

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Assembly intended that a local library be separate and distinct from the village.

Moreover, in your letter you have stated that, based on the aforementioned 1953 opinion, you have and to the present are instructing corporate authorities that their Social Security agreements include employees of the local library and that the wages of said employees must be included on their quarterly Social Security wage reports. It is an established premise of statutory construction that in determining the construction of an ambiguous statute, great weight will be afforded longstanding, contemporaneous construction placed on it by the officer or department of State charged with its execution. (Ranquist v. Stackler (1977), 55 Ill. App. 3d 545, 550-51; Legg v. Fair Employment Practices Comm'n (1975), 28 Ill. App. 3d 932, 939.) The doctrine of contemporaneous construction becomes even more persuasive when it has been longstanding and the legislature, presumed aware of the administrative interpretation, has amended other sections of the Act during the period involved but left untouched the sections subject to the seemingly approved administrative interpretation. (Freeman Coal Mining Corp. v. Ruff (1967), 85 Ill. App. 2d 145, 149-50.) During the 1969 amendment of section 3-5, the General Assembly left the actual tax levying authority with the corporate authorities. As I have pointed out, that was the determinative



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factor upon which the outcome of the 1953 opinion was based. Therefore, I am of the opinion that the library board is not an "instrumentality" within the meaning and intent of the Social Security Enabling Act.

Since the library board is neither a political subdivision nor an "instrumentality" thereof, it is not authorized under section 21-119 of the Social Security Enabling Act to enter into an agreement to extend coverage to its employees. Rather, as legally a part of the village, the village of Marissa is authorized to enter into, and has, in fact, entered into, such an agreement covering its employees which includes the employees of the local library.

Very truly yours,

A T T O R N E Y   G E N E R A L