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SPRINGFIELD

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FILE NO. 83-014

COMPENSATION:

Procedure for Payment of  
Annual Lump Sum Payments to  
County Clerks and Chief Clerks of  
County Boards of Election Commissioners

Honorable Daniel D. Doyle  
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Honorable James T. Teros  
State's Attorney, Rock Island County  
Rock Island County Courthouse  
Rock Island, Illinois 61201

Gentlemen:

I have your letter wherein you inquire regarding the procedure for payment of annual lump sum awards to county clerks and chief clerks of county boards of election commissioners pursuant to section 1 of "AN ACT in relation to the

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compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Recorders and Auditors, etc." [Fees and Salaries Act] (Ill. Rev. Stat. 1982 Supp., ch. 53, par. 37a). Specifically, you cite opinion No. 82-034, issued October 12, 1982, which addressed generally the procedure for payment of such awards by the State Board of Elections, and request clarification on the following matters:

1. May the county clerk or chief clerk of a county board of election commissioners elect to receive the annual award without deductions by the State Board of Elections for taxes and retirement contributions, and assume liability for the payment of all such expenses?
2. Is the county responsible for payment of employer's contributions to the Illinois Municipal Retirement Fund on behalf of the county clerk or chief clerk for the amount of the award?

For the reasons hereinafter stated, it is my opinion that a county clerk or chief clerk of a county board of election commissioners, as the case may be, may not elect to receive the annual lump sum award provided in section 1 of the Fees and Salaries Act without necessary deductions first being made by the State Board of Elections. Further, it is my opinion that the county is liable for the payment of employer's contributions to the Illinois Municipal Retirement Fund based on the amount of additional earnings payable to the county clerk or chief clerk under the Fees and Salaries Act, if the county clerk or chief clerk is a participating member of the Fund.

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Section 1 of the Fees and Salaries Act prescribes minimum salaries for certain officers in counties of less than 2,000,000, and further provides:

" \* \* \*

In addition to but separate and apart from the compensation provided for above, the county clerk of each county that does not have a county board of election commissioners and the chief clerk of each county board of election commissioners shall receive an award of \$3,500 per annum for the additional duties required of such officer by the consolidation of elections law. The total amount required for such awards each year shall be appropriated by the General Assembly to the State Board of Elections which shall distribute the awards in annual lump sum payments to the several county clerks and chief election clerks.

\* \* \*

"

In opinion No. 82-034, my predecessor advised that the State Board of Elections is required to deduct and withhold from these annual payments State and Federal income taxes, together with Federal Social Security taxes and employee contributions payable to the Illinois Municipal Retirement Fund. It was further advised that Social Security taxes and pension contributions should be forwarded to the several counties for accounting purposes and for payment to the board of trustees of the Illinois Municipal Retirement Fund.

I agree with the conclusion reached in opinion No. 82-034 that both Federal and State statutes require that the

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taxes and contributions in question be deducted from the annual award prior to payment to the county clerk or chief clerk of a county board of election commissioners. (See 26 U.S.C. § 3402(a); Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-173; ch. 120, par. 7-701; opinion No. 82-034, at 6-10.) Therefore, it is my opinion that a county clerk or chief clerk of a county board of election commissioners may not elect under section 1 of the Fees and Salaries Act to receive an annual award without deductions being made by the State Board of Elections for income and Social Security taxes and Illinois Municipal Retirement Fund contributions, where appropriate.

In response to your second question, if a county clerk or chief clerk of a county board of election commissioners is a covered employee required to contribute to the Illinois Municipal Retirement Fund (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-109.), section 7-173 of the Illinois Pension Code (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-173) provides that he or she shall make contributions to the Illinois Municipal Retirement Fund in an amount equal to certain specified percentages of each payment of earnings, together with contributions to the Fund for Social Security taxes in the amount required by law. Section 7-114 of the Illinois Pension Code (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-114) defines "earnings", for purposes of article 7 of the Illinois Pension Code, as follows:

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" \* \* \*

(b) For periods during which an employee is a covered employee, all remuneration for employment, defined as 'wages' under the Social Security Enabling Act, including that part of such remuneration which is in excess of any maximum limitation provided in such Act.

\* \* \* "

Section 21-105 of the Social Security Enabling Act (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 21-105) defines "wages":

"\* \* \* All remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for 'employment' within the meaning of the Federal Insurance Contributions Act, would not constitute 'wages' within the meaning of that Act."  
(Emphasis added.)

The term "employment" is defined in section 21-112 of the Social Security Enabling Act (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 21-112) to include:

"\* \* \* Any service performed by an elective officer, if covered under an agreement pursuant to 'The 1951 Act' or this Article \* \* \*.

\* \* \* "

Clearly, the \$3,500 annual award to county clerks and chief clerks of county boards of election commissioners is remuneration paid to those officers for services performed in their official capacity, because it is payment for "additional services required of such officer by the consolidation of

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elections law". Moreover, the award is not excluded from the definition of "wages" contained in section 3121 of the Federal Insurance Contributions Act (26 U.S.C. § 3121), and thus, is not excluded from the definition of "wages" in section 21-105 of the Social Security Enabling Act. Therefore, the \$3,500 annual lump sum award provided in section 1 of the Fees and Salaries Act is "earnings" for which retirement contributions and Social Security taxes must be paid by the recipient.

Section 7-172 of the Illinois Pension Code (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-172) provides for the payment of employer contributions to the Illinois Municipal Retirement Fund:

"Contributions by participating municipalities and participating instrumentalities. (a) Each participating municipality and each participating instrumentality shall make payment to the fund as follows:

\* \* \*

2. An amount equal to the employee contributions provided by paragraphs (a) and (b) of Section 7-173, whether or not the employee contributions are withheld as permitted by that Section;

3. Municipality contributions for covered employees in the amounts required by the Social Security Enabling Act;

\* \* \*

"

Pursuant to section 7-172, a county must contribute an amount equal to the employee contributions deducted from the earnings

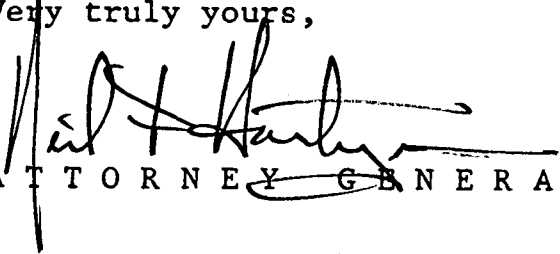
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of its covered employees, together with employer's Social Security taxes in the amount required by law.

The language of section 7-172 of the Illinois Pension Code is plain and unambiguous and may not be restricted. (See Bovinette v. City of Mascoutah (1973), 55 Ill. 2d 129, 133.) The \$3,500 annual lump sum award to county clerks and chief clerks of county boards of election commissioners constitutes "earnings" for which employee contributions to the Illinois Municipal Retirement Fund and Social Security taxes must be paid by the recipient. Therefore, where the county clerk or chief clerk of a county board of election commissioners is required to make employee contributions to the Illinois Municipal Retirement Fund, it is my opinion that there is a reciprocal duty on the part of the county to pay over to the board of trustees of the Illinois Municipal Retirement Fund employer's contributions and Social Security taxes based on the amount of the award.

You have also asked whether the State will furnish funds with which the county may make such employer's contributions. I have reviewed the appropriations to the State Board of Elections for the past fiscal year and it appears that no funds have been appropriated to the Board for such purpose.

Very truly yours,

  
ATTORNEY GENERAL