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SPRINGFIELD

May 12, 1976

FILE NO. S-1083

HIGHWAYS:
Township Road Districts
as Separate Governmental
Entities.

Mr. Frank A. Kirk
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303 East Monroe Street
Springfield, Illinois 62706

Dear Mr. Kirk:

I have your letter wherein you ask the following
two questions:

1. Have township road districts been so merged with the townships with which they are coextensive as to cease to be separate governmental entities for purposes other than implementing the Social Security Enabling Act?

2. In carrying out his statutory powers and duties, is a highway commissioner subject to the jurisdiction and control of the board of auditors

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or electors at a town meeting, in the absence of a specific statutory provision granting such jurisdiction or control?"

Your questions were brought about by Opinion No. NP-724, issued March 21, 1974. That opinion concluded that the township board of auditors is responsible for deciding whether township road district employees will be covered by the Social Security Act. (42 U.S.C.A. 301 et seq.) The conclusion in Opinion No. NP-724 was based on the provisions of the Social Security Enabling Act. (Ill. Rev. Stat. 1975, ch. 108 1/2, pars. 21-101 et seq.)

The Social Security Enabling Act describes road districts as "political subdivisions". Section 21-106 of the Act (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 21-106) reads as follows:

"'Political subdivision': Any county, township, municipal corporation, school district, park district, road district, sanitary district, library district, library system, or other independent governmental entity." (emphasis added.)

The governing body of each political subdivision is responsible for deciding whether the employees of the subdivision will be covered by the Social Security Act; the govern-

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ing body also has a duty to prepare a plan of coverage for the employees (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 21-121).

"Governing body" is defined in section 21-109 of the Social Security Enabling Act (Ill. Rev. Stat. 1975, ch. 108 1/2, par. 21-109) as follows:

"'Governing body': Any body which by law is authorized to determine, establish and fix a rate of taxation on property of a municipality, political subdivision or instrumentality, including the electors in townships."

Prior to the enactment of Public Acts 77-1617 and 77-2787, the highway commissioner of the township road district was the governing body of the district since it was he who determined and levied taxes for road purposes in the road district. Public Acts 77-1617 and 77-2787 removed the highway commissioner's authority to determine and levy taxes for road purposes and gave it to the township board of auditors. The township board now has the authority to determine and levy township road district taxes (Ill. Rev. Stat. 1975, ch. 121, par. 6-501); and, as a result, the board is the governing body of the township road district for the purposes of the Social Security Enabling Act. Thus, Opinion No.

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NP-724 concluded that, as the governing body of the road district, the township board decides whether road district employees will be covered by the Social Security Act.

Although the board of township auditors is the governing body of the road district for the purposes of the Social Security Enabling Act, the road district is still a governmental entity distinct from the township. Prior to the enactment of Public Acts 77-1617 and 77-2787, the distinction between the two entities was well established. The Illinois Supreme Court in several cases held that the township board had no power or authority over roads in the township. (American Mexican Refining Co. v. Wetzel, 350 Ill. 575; People ex rel. Book v. Baltimore and Ohio Railroad Co., 322 Ill. 623.) The court took the view that the roads were under the jurisdiction of the road district and that the use of the term "township" in connection with the roads had no significance other than to identify the geographical area wherein the roads were located. (Western Sand & Gravel Co. v. Town of Cornwall, 2 Ill. 2d 560.)

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In giving the township board the authority to levy taxes for road purposes, the legislature did not intend to abolish township road districts as distinct governmental units. The tax levied by the township board is expressly for road purposes in the road district. Section 6-501 of the Illinois Highway Code provides in pertinent part as follows:

"

* * *

On or before the first Tuesday in September the township board of auditors or highway board of auditors, as the case may be, shall determine, levy and certify to the county clerk the amount necessary to be raised by taxation for road purposes in such road district.

* * *

(emphasis added.)

The provisions of the Illinois Highway Code expressly provide that roads located within the township are not under the jurisdiction of the board of auditors, but are, instead, under the jurisdiction of the township road district. Sections 6-101 and 6-102 of the Code (Ill. Rev. Stat. 1975, ch. 121, pars. 6-101 and 6-102) provide in pertinent part:

"§6-101. Roads which are part of the township and district system are under the jurisdiction of the several road districts in which they are located, subject to such supervision by the County and the Department as is provided in this Code. A road district comprises either a township, township district, road district or county unit road district in existence immediately prior to the effective date of this Code or any area created a road district under the provisions of this Code."

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"§6-102. Each township of the several counties under township organization, for the purposes of this Code, shall be considered and is called a road district for all purposes relating to the construction, repair, maintenance, financing and supervision of township roads unless under prior law it has been or pursuant to this Code is consolidated into a consolidated township road district or into a county unit road district.

* * *

(emphasis added.)

A highway commissioner is elected in each road district (Ill. Rev. Stat. 1975, ch. 121, par. 6-112). The highway commissioner in a township road district is charged with specific duties. These duties include laying out, altering, widening or vacating township roads (Ill. Rev. Stat. 1975, ch. 121, par. 6-201.2), directing the expenditure of all monies collected in the district for road purposes (Ill. Rev. Stat. 1975, ch. 121, par. 6-201.6), letting contracts and employing labor for the construction, maintenance, and repair of roads within the district (Ill. Rev. Stat. 1975, ch. 121, par. 6-201.7), and having general charge of the roads of his district, keeping the same in repair and improving them insofar as practicable. Ill. Rev. Stat. 1975, ch. 121, par. 6-201.8.

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Statutes relating to the same subject must be construed together in order to determine the intent of the legislature. (Swain v. County of Winnebago, 111 Ill. App. 2d 458). The legislature has removed the highway commissioner's power to levy taxes for road purposes, but it has left intact those sections of the Highway Code which establish township road districts as distinct governmental units and charge highway commissioners as officers of the township road districts with specific statutory duties. The provisions of the Highway Code demonstrate that when the legislature gave the board of auditors the power to tax for road purposes it did not intend to merge township road districts with townships or to subject the highway commissioner to the control of the board of auditors.

Therefore, my answer to your first question is that township road districts are governmental entities separate and distinct from townships. The fact that the board of township auditors has the responsibility under the provisions of the Social Security Enabling Act to decide whether road district employees will be covered by the Social Security Act

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does not eliminate township road districts. They remain separate governmental entities.

In answer to your second question, it follows that since the jurisdiction over township roads is vested in the road district, the highway commissioner of the road district, in the absence of a specific statutory provision, is not subject to the control of the board of auditors or to the control of the electors at a town meeting in carrying out his statutory duties.

Very truly yours,

A T T O R N E Y G E N E R A L