



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

September 5, 1995

FILE NO. 95-012

PENSIONS:  
Status of Arson Investigators  
as Police Officers for Purposes  
of Social Security Exemption

Mr. Thomas Armstead  
State Fire Marshal  
1035 Stevenson Drive  
Springfield, Illinois 62703-4259

Dear Mr. Armstead:

I have your letter wherein you inquire whether arson investigators employed by the Office of the State Fire Marshal are "policemen", who, by virtue of their employment as such, are ineligible for Social Security coverage under subsections 218(d)(5)(A) and 218(d)(8)(D) of the Social Security Act (42 U.S.C. § 418(d)(5)(A), 418(d)(8)(D)). For the reasons hereinafter stated, it is my opinion that such arson investigators are "policemen", for purposes of the Act, and are therefore exempt from Social Security coverage.

Section 218 of the Social Security Act (42 U.S.C. § 418) provides for Social Security coverage for various State and

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local governmental employees. Subsections 218(d)(5)(A) and (d)(8)(D) provide, respectively:

"(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this subchapter to service in any policeman's or fireman's position.

\* \* \*

"

"(D) Except in the case of agreements modified as provided in subsection (1) of this section and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

\* \* \*

"

Illinois is not subject to the exceptions referred to in subsection 218(d)(5)(D).

The Social Security Act does not define the term "policeman", but rather relies upon State statutes and judicial decisions to determine who is a "policeman" within a given State. As noted in section 226 of the Handbook for State Social Security Administrators (1984):

"A police officer's or firefighter's position for purposes of the Federal-State agreement is any position which is classified as such under the State statutes and court decisions. Generally, these positions exist in the regularly organized police and fire departments of incorporated municipalities, towns, and cities. In most States a police officer is a member of the 'police' which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms 'police officer' and 'firefighter' do not include services in

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positions which, although connected with police and firefighting functions, are not police officer or firefighter positions."

The Illinois Pension Code contains two sections which relate to policemen in the context of Social Security coverage. Section 21-102.15 of the Illinois Pension Code (40 ILCS 5/21-102.15 (West 1992)) provides:

"Policeman. 'Policeman' means any person who is a member of the police department of a municipality as defined in Section 3-103 of this Code or of a city subject to Article 5 of this Code, whether paid on a full-time or part-time basis, or of a law enforcement organization within a department or agency of the State, and who is by virtue of such public employment vested by law with a primary duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses."

Section 21-107 of the Illinois Pension Code (40 ILCS 5/21-107 (West 1992)) provides:

"State police and firemen. Any position in the service of a State agency, department, board or commission which (1) has been designated as a fireman, police officer, or law enforcement officer by the State Department of Central Management Services, the State Attorney General or the State Agency, or declared to be a fireman or police position as a result of a court ruling upon the question, and (2) extends to the incumbent the right to participation in the State Employees' Retirement System, shall be exempted from Social Security coverage in compliance with Section 218(d)(5)(A) of the Social Security Act, effective as of the date of such designation or court ruling, except that beginning July 1, 1991, incumbents of such positions who do not participate in the State Employees' Retirement System shall be

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subject to mandatory Social Security coverage."

In addition, section 14-110 of the Illinois Pension Code (40 ILCS 5/14-110 (West 1993 Supp.)) provides for an alternative retirement annuity for certain designated State law enforcement personnel who are ineligible for Social Security coverage. Arson investigators, however, are not among those personnel who are specified as being eligible for the alternative formula.

Arson investigators are appointed by the Office of the State Fire Marshal pursuant to section 2 of the State Fire Marshal Act (20 ILCS 2905/2 (West 1992)), which transferred to the Office certain powers and duties, including that of arson investigation. Section 1 of the Peace Officer Fire Investigation Act (20 ILCS 2910/1 (West 1992), as amended by Public Act 88-586, effective August 12, 1994) provides, in part:

"Peace Officer Status. Any person who is a sworn member of any organized and paid fire department of a political subdivision of this State and is authorized to investigate fires or explosions for such political subdivision, or who is employed by the Office of the State Fire Marshal to determine the cause, origin and circumstances of such fires or explosions that are suspected to be arson or arson-related crimes, may be classified as a peace officer by the political subdivision or agency employing such person. A person so classified shall possess the same powers of arrest, search and seizure and the securing and service of warrants as sheriffs of counties, and police officers within the jurisdiction of their political subdivision. While in the actual investigation and matters incident thereto, such person may carry weapons as may be necessary, but only if that

person has satisfactorily completed (1) \* \* \* in the case of employees of the Office of the State Fire Marshal, a training course approved by the Department of State Police which also substantially conforms to standards promulgated pursuant to 'An Act in relation to firearms training for peace officers', approved August 29, 1975, as amended; and (2) a course in fire and arson investigation approved by the Office of the State Fire Marshal pursuant to the Illinois Fire Protection Training Act. Such training need not include exposure to vehicle and traffic law, traffic control and accident investigation, or first aid, but shall include training in the law relating to the rights of persons suspected of involvement in criminal activities.

Any person granted the powers enumerated in this Section may exercise such powers only during the actual investigation of the cause, origin and circumstances of such fires or explosions that are suspected to be arson or arson-related crimes." (Emphasis added.)

Section 2 of the Act formerly defined arson investigation to mean the determination of the cause and origin of fires, but that definition was deleted by Public Act 85-718, effective January 1, 1988. The term is no longer statutorily defined, and arguably includes matters relating to the identification and apprehension of arsonists, as well as the determination of the cause and origin of fires. Indeed, according to the job descriptions for arson investigators in the Office of the State Fire Marshal, prominent among the duties of investigators is the enforcement of criminal laws relating to arson, including the arrest of suspects and preparation of materials to assist in prosecutions.

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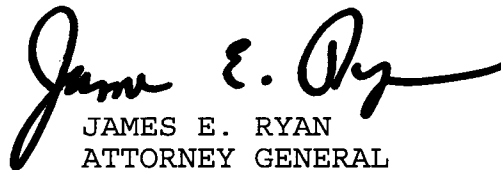
Under section 21-102.15 of the Illinois Pension Code, persons are considered to be "policemen" if they are members "of a law enforcement organization within a department or agency of the State" and are "vested by law with a primary duty to maintain public order or to make arrests for officers" even where such duties are "limited to specific offenses". Investigators are members of a law enforcement organization within the Office of the State Fire Marshal, a State agency, since, under section 1 of the Peace Officer Fire Investigator Act, they are assigned to the Division of Arson Investigation, have been designated as peace officers by the Fire Marshal and have been delegated appropriate powers. Under that Act, investigators have a primary duty to maintain public order by investigating suspected arson fires and arresting persons responsible therefor. Although their power of arrest is limited to offenses constituting or relating to arson, it is clear they have been granted all of the powers possessed by sheriffs and police officers while in the "actual investigation" of suspicious fires "and matters incident thereto".

In conclusion, it is my opinion that arson investigators employed by the Office of the State Fire Marshal are police-

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men, for purposes of subsection 218(d) of the Social Security Act, who are therefore ineligible for Social Security coverage.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JAMES E. RYAN  
ATTORNEY GENERAL