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PENSIONS:

Whether Sheriffs and Deputies
are "Policemen" for Purposes
of Social Security Coverage

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Social Security Unit
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Dear Mr. Mory:

I received your letter wherein you ask for my
opinion on the following question:

Are sheriffs and deputy sheriffs "policemen"
for the purposes of exclusion from Social Security
coverage pursuant to section 218(d)(5)(A) of the
Social Security Act?

Section 218 of the Social Security Act (42 U.S.C.
418) provides that the Secretary of Health, Education and

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Welfare shall, at the request of any State, enter into an agreement with that State for the purpose of extending Federal Old-Age, Survivors, and Disability Insurance benefits to individuals performing services as employees of the State, any of its political subdivisions, or instrumentalities of either the State or its political subdivisions. Section 218(d)(5)(A) of the Act (42 U.S.C. 418(d)(5)(A)), states the relevant limitation:

"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."

In 1954 the Act was amended to extend such coverage to such State and local employees even if they were already covered by a retirement system. The purpose of the amendment was to make the benefits available to more workers, but there was no change in the Act with respect to the exclusion of policemen and firemen. The Report of the Senate Committee on Finance (U.S. Cong. & Admin. News 1954, Vol. 3, pp. 3715-16) stated:

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" * * *

The bill continues the present exclusion of policemen and firemen who are covered by a State or local retirement system. Policemen and firemen, because of the special demands made by their work, usually have special provisions in their retirement system (retirement at age 50 or 55, for example) and most of them believe that it would be unwise to attempt to coordinate these provisions with the provisions of the old-age and survivors insurance system.

" * * *

Nowhere in the legislative history or in the Act is the word "policeman" defined. The Handbook for State Social Security Administrators, section 226, states:

"Policemen's and Firemen's Positions Defined.—
A policeman's or fireman'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 policeman is a member of the 'police' which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms 'policeman' and 'fireman' do not include services in positions which, although connected with police and fire-fighting functions, are not policeman's or fireman's positions.

In many jurisdictions, such positions as game warden, forester, forestry patrolman, crime investigator supervisor, police department stenographer, sheriff, and highway patrolman have been held not to be 'policeman's' positions."

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Therefore, whether sheriffs and their deputies are included under the definition of "policeman" is a matter of State determination.

It is my opinion that under Illinois law sheriffs and their deputies are not considered to be "policemen".

Illinois statutes define sheriffs and policemen as distinct classes. Section 1.08 of "AN ACT to revise the law in relation to the construction of statutes" (Ill. Rev. Stat. 1975, ch. 131, par. 1.08) defines certain officers:

"'Sheriff,' 'coroner,' 'clerk,' or other words used for an executive or ministerial officer may include any deputy or other person performing the duties of such officer, either generally or in special cases."

This section places deputies in the same class as sheriffs for the purposes of statutory construction.

Section 1.20 of the same Act (Ill. Rev. Stat. 1975, ch. 131, par. 1.20) defines the class of policemen as follows:

"'General superintendent of police,' 'secretary of the general superintendent of police,' 'assistant general superintendent of police,' 'first deputy superintendent of police,' 'chief of police,' 'assistant chief of police,' 'city marshall,' 'assistant city marshall,' 'deputy city marshall,' 'chief of detectives,' 'assistant chief of detectives,' and all 'captains,' 'lieutenants,'

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'detective sergeants,' 'second-class sergeants,' 'sergeants,' 'inspector of police,' 'detectives,' 'patrolmen,' 'operators,' and 'civilian' or 'plain clothes policemen' and 'assistant identification inspector,' mean 'policemen employed and in the service of a municipality,' and the term 'police force,' shall be construed to include such persons in the employ of a municipality as members of the department of police, who are or shall hereafter be appointed and sworn as policemen."

Nowhere in this comprehensive section does the word "sheriff" appear.

The reason for classifying sheriffs and their deputies separately from policemen stems from the traditional differences in their duties and status. In People v. Nellis (1911), 294 Ill. 12 at 23, the court stated:

"* * * We think, therefore, that a sheriff does not fall within the same class, for the purposes of legislation, that coroners, constables and policemen do, and that the duties of a sheriff and the rights which pertain to his office so far differ from the duties which are imposed upon other police officers in this State, and the rights which pertain to their offices, as to form a proper and legitimate basis for legislation. In fact, such distinction is recognized in the constitution itself and in statutes which have existed in this State from its earliest history, wherein the peace officers of the State have been divided into sheriffs,—the principal executive officer of the county,—and such subordinate peace officers as coroners, constables and policemen. * * *"

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The elective office of sheriff is provided for in section 4(c) of article VII of the Illinois Constitution of 1970. Section 4(d) of article VII provides that the sheriff has the duties, powers or functions derived from common law unless altered by law or county ordinance. The sheriff is the chief executive officer of the county. (Dahnke v. People (1897), 168 Ill. 102.) He is responsible for the custody and care of the county court house and jail (Ill. Rev. Stat. 1975, ch. 125, par. 14) and has a duty to attend upon all courts of record held in his county, (Ill. Rev. Stat. 1975, ch. 125, par. 19.) The sheriff has the power to appoint deputies who may perform any and all the duties of the sheriff. (Ill. Rev. Stat. 1975, ch. 125, pars. 7 and 12.) In short, sheriffs and their deputies have many powers and duties beyond merely those of keeping peace.

In contrast, policemen are essentially conservators of the peace. They are not elected, nor are they empowered to perform the duties of an elective office as are sheriffs and deputy sheriffs.

County sheriffs and deputy sheriffs in counties covered by the Illinois Municipal Retirement Fund have been

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covered under Social Security since the Illinois Municipal Retirement Fund was coordinated with Federal Social Security in 1957 after a successful referendum conducted pursuant to section 218(d)(3) of the Social Security Act. (42 U.S.C. 418 (d)(3).) During the past twenty years of coverage the General Assembly has not sought to change the definitions in the statutes in order to include sheriffs and deputies under the classification of policemen. In 1958 Attorney General Latham Castle advised that sheriffs and other elected county officials were mandatorily covered by Social Security regardless of whether those officials chose to participate in the Illinois Municipal Retirement Fund. Since the legislature has made no change in the law in the face of twenty years of administrative practice and an Attorney General's opinion requiring sheriffs to participate in Social Security coverage, it appears that it has tacitly approved the practice. The Illinois Appellate Court, in deciding the case of Strat-O-Seal Mfg. Co. v. Scott (1966), 72 Ill. App. 2d 480, 485, said that in a case of first impression in the State:

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" * * *
* * * opinions of the Attorney General as Chief Law Officers of the State of Illinois 'will be accorded considerable weight.' City of Champaign v. Hill, 29 Ill App2d 429, 444, 173 NE2d 839, 846. These opinions as well as administrative policy pursued as a result of them and the fact that the legislature has seen fit to remain quiescent through several successive sessions suggests and indicates 'legislative acquiescence in the contemporary and continuous interpretation' which they announced. People ex rel. Spiegel v. Lyons, 1 Ill.2d 409, 414, 115 NE2d 895, 898.
* * *"

Because sheriffs and deputy sheriffs are not "police-men" under Illinois law and in light of the long standing administrative practice, it is my opinion that sheriffs and deputy sheriffs are not excluded from Social Security coverage by section 218(d)(5)(A) of the Social Security Act.

Very truly yours,

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