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SPRINGFIELD

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FILE NO. S-1351

COUNTIES:

Applicability of Unemployment  
Insurance Act to Per Diem Employees

Honorable Stephen H. Peters  
State's Attorney of DeWitt County  
Court House  
Clinton, Illinois 61727

Dear Mr. Peters:

You recently requested my opinion as to whether certain county employees are within the provisions of The Unemployment Insurance Act (Ill. Rev. Stat. 1977, ch. 48, pars. 300 et seq.). These employees are election judges, Board of Review members, and jury commissioners. Under section 13-10 of the Election Code (Ill. Rev. Stat. 1977, ch. 46, par. 13-10) and section 8 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 489), the first two groups of employees are paid a certain amount per diem. Under section 6 of "AN ACT in relation to jury commissioners,

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etc." (Ill. Rev. Stat. 1977, ch. 78, par. 29), jury commissioners are paid an amount fixed by the county board. These positions normally require only a few days or weeks of work per year.

Nevertheless, by the clear terms of the Act as recently amended by Public Act 80 - 2d S. S. - 1, I conclude that these employees are within the unemployment insurance plan.

Section 1400 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 550) provides in part that:

" \* \* \* For the year 1941 and for each calendar year thereafter, contributions shall accrue and become payable by each employer upon the wages paid with respect to employment after December 31, 1940. \* \* \*

\* \* \*

This in turn requires reference to the Act's definitions of "employer," "employment," and "wages." Subparagraph B.5. of Section 205 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 315) provides that:

"'Employer' means:

\* \* \*

\* \* \* [W]ith respect to the years 1978 and thereafter, each governmental entity referred to in clause (B) of Section 211.1;

\* \* \*

Clause (B) of section 211.1 (Ill. Rev. Stat. 1977, ch. 48, par.

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321.1 in turn states that "employment" includes:

" \* \* \* (1) service performed after December 31, 1977 by an individual in the employ of this State or any of its instrumentalities, or any political subdivision or municipal corporation thereof or any of their instrumentalities, or any instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other States or political subdivisions, provided that such service is excluded from the definition of 'employment' in the Federal Unemployment Tax Act by Section 3306(c)(7) of that Act."

A reference to the Federal statute there mentioned shows that service by county employees is indeed excluded from that statute's definition of "employment," since it excludes:

" \* \* \*  
service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;  
\* \* \*

\* \* \* "   
(26 U.S.C. §3306(c)(7) (1970).)

Thus, a county is an "employer" under The Unemployment Insurance Act, and work for a county is generally "employment." Sections 207 through 233 of the Act (Ill. Rev. Stat. 1977, ch. 48, pars. 317 through 343) contain various modifications to the Act's definitions of "employment," but it is evident that none of these applies to the employees you have mentioned. It should be noted,

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however, that section 220 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 330) contains several exceptions that do apply to certain other government employees.

Finally, section 234 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 344) defines "wages":

"Subject to the provisions of Sections 235 and 245 C [which do not affect the result here], 'wages' means every form of remuneration for personal services, including salaries, commissions, bonuses, and the reasonable money value of all remuneration in any medium other than cash. \* \* \*

\* \* \*

Thus, the per diem workers you mention come within the terms of section 1400 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 550) quoted above which requires contributions on their behalf. The Act does not condition its application to employees on their working any minimum part of a year. To be sure, subparagraph E of section 500 of the Act (Ill. Rev. Stat. 1977, ch. 48, par. 420) provides that an unemployed person may receive benefits only if:

\* \* \*

\* \* \* With respect to any benefit year beginning on and after January 12, 1975, he has been paid during his base period [of one year] wages for insured work equal to not less than \$1,000, \* \* \*."

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Thus, a person whose only employment during a year was for a few days in a per diem position would not be eligible for benefits; but if the person has other employment during at least part of the year, the contributions on account of the per diem work will help establish credit toward that person's eligibility.

The per diem employees you mention are within the definitions of the Act, and are not within any of its specific exceptions. The Illinois Supreme Court, referring to The Unemployment Compensation Act, has stated that:

"

\* \* \*

\* \* \* [E]xemption provisions are strictly construed against the one claiming the exemption.  
\* \* \*

\* \* \*

"

(Ross v. Cummins (1956), 7 Ill. 2d 595, 597.)

I therefore conclude that the employees in question are within the Act's requirement that contributions or payments in lieu of contributions be made on account of their employment.

Very truly yours,

A T T O R N E Y   G E N E R A L