



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 31, 1974

FILE NO. S-830

FEES AND SALARIES:
Employer Contributions for
Retirement and Insurance

John L. Petersen
Chairman
Illinois Fire Protection Personnel
Standards and Education Commission
Room 211
628 East Adams Street
Springfield, Illinois 62701

Dear Mr. Petersen:

I have your letter wherein you state, in part:

" * * * 1. We would like a definition of the word 'salary' as it appears in section 10 of 'AN ACT to create the Illinois Fire Protection Personnel Standards and Education Commission, etc.', (Illinois Revised Statutes 1973, Chapter 85, Para. 540). As used in the referred section, does 'salary' include fringe benefits such as insurance, pension plans and the like?

2. In the same section is a sentence, 'In addition

John L. Petersen - 2.

to reimbursement provided herein by the Commission to local governmental agencies for participation by trainees, the Commission in each year shall reimburse the local governmental agencies participating in the training program for permanent fire protection personnel in the same manner as trainees for each such training program.' Does that language mean that the Commission must reimburse the participating agencies on the identical basis for participation in advanced programs as it does on the training program, or may the Commission make a determination to fund only parts of the advanced program less than the entire advanced program? The issue is significant because of budgetary limitations in the grant program and in view of the fact that under the enabling legislation the Commission is mandated to establish the training program and the participating agencies are mandated to have their trainees participate. On the other hand, the development of advanced courses under the enabling legislation is permissive as opposed to mandatory and participation in advanced programs by agencies participating in the trainee program are optional as opposed to mandatory.

* * *

"

Section 10 of the Illinois Fire Protection Training Act (Ill. Rev. Stat. 1973 Supp., ch. 85, par. 540) reads, in part, as follows:

"* * * The Commission, not later than September 1st of each year shall reimburse the local governmental agencies or individuals participating in the training program in an amount equalling 1/2 of the total sum paid by them during the previous fiscal year for tuition at training schools, salary

of trainees while in school, necessary travel expenses and room and board for each trainee. In addition to reimbursement provided herein by the Commission to the local governmental agencies for participation by trainees, the Commission in each year shall reimburse the local governmental agencies participating in the training program for permanent fire protection personnel in the same manner as trainees for each such training program. No more than 50% of the reimbursements distributed to local governmental agencies in any fiscal year shall be distributed to local governmental agencies of more than 500,000 persons. If at the time of the annual reimbursement to local governmental agencies participating in the training program there is an insufficient appropriation to make reimbursement in full, the appropriation shall be apportioned among the participating local governmental agencies."

Section 10 delineates four categories of reimbursable expenditures: (1) tuition at training schools; (2) salary of trainees while in school; (3) necessary travel expenses; and (4) room and board for each trainee. Your first question pertains to the second category of reimbursable expenditures, i.e., salary of trainees while in school. Specifically you inquire as to whether employer's contributions to insurance programs and retirement plans would fall within the meaning of "salary".

The Illinois Supreme Court has defined the word

John L. Petersen - 4.

"salary" as follows: "a salary is a fixed, annual, periodical amount payable for services and depending upon the time of employment and not the amount of service rendered". (In re Sanitary District Attorneys, 351 Ill. 206, 274; Commonwealth Insurance Co. v. Board of Review, 414 Ill. 475, 485.) Black's Law Dictionary defines "salary" as: "a fixed periodical compensation paid for services rendered". (Black's Law Dict., (4th Ed. 1951).) Implicit in these definitions of the word "salary" is that an amount or sum of money is actually paid to the employee. Since employer contributions to insurance programs, whereby the employee is insured, and retirement plans, whereby the employee is the beneficiary, are never paid directly to the employee, these contributions do not fall within the scope of the definition of the word "salary".

Courts, in other jurisdictions, have held that employer contribution to employee retirement plans and insurance programs are not "salary". Brasher v. Chenille, Inc., 251 So. 2d 824 (La. App., 1971); Hodnett v. Monroe City School Board, 270 So. 2d 598 (La. App. 1972); County of Erie v. Hoch, 26 App. Div. 2d 4, 270 N.Y.S. 2d 225 (1966), modified,

John L. Petersen - 5.

19 N.Y. 2d 854, 280 N.Y.S. 2d 584 (1967).

In Brasher, plaintiff entered into an employment contract for the year 1969 with defendant corporation. Plaintiff's employment was terminated in September of 1969. Pursuant to statute, plaintiff sued for the remainder of his salary. Plaintiff included in his claim the amount his employer contributed to a retirement plan. The court pointed out that the statute upon which plaintiff based his complaint was penal in nature, and therefore, must be strictly construed. Then, the court, in construing the statute, declared that the word "salary" did not include employer retirement plan contributions which were more closely akin to other fringe benefits such as hospital insurance. Brasher v. Chenille, Inc., 251 So. 2d 824, 627 (La. App. 1971).

Hodnett v. Monroe City School Board, 270 So. 2d 596 (La. App. 1972), involved a class action on behalf of teachers in a city school system for declaratory judgment as to the legality of payment of employer's contribution to the teachers' retirement system from the proceeds of sales

John L. Petersen - 6.

tax revenue authorized by special election to provide funds to supplement teacher's salaries. The court of appeals held that such employer contributions to a retirement plan in which no teacher had any vested right until death or retirement was not part of a teacher's "salary", therefore, such contributions could not be paid from the sales tax revenue. In County of Erie v. Hoch, 26 App. Div. 2d 4, 270 N.Y.S. 2d 225 (1966), modified, 19 N.Y. 2d 854, 280 N.Y.S. 2d 584 (1967), the county of Erie participated in a community mental health service program. The Community Mental Health Services Act provided that certain expenditures by the county would be subject to reimbursement by the State. Expenditures subject to reimbursement included "salary of qualified and necessary personnel" as well as "operation, maintenance and service costs". The county of Erie sought reimbursement for the payment of employees' fringe benefits, i.e., hospital insurance and retirement funds. The Commissioner of Mental Hygiene rejected such reimbursement. The county of Erie petitioned for review of this determination. The appellate

John L. Petersen - 7.

division court affirmed the finding of the commissioner and stated as follows:

"The County of Erie in adopting this Community Mental Health Service did so subject to the law and regulations then in effect and while we find the argument presented logical and convincing, to adopt it, under the present circumstances, would have a serious and possibly catastrophic reaction on the budget of the Department and open the floodgates to similar demands by other municipalities."

I am of the opinion that the phrase "salary of trainees while in school" authorizes reimbursement based upon that sum of money actually paid to the trainee as wages while in school by the employer-local governmental agency. It does not authorize reimbursement for employer contributions to insurance programs and pension programs. Obviously, contributions deducted from the trainees salary for insurance and retirement would be part of his gross salary, and therefore, included in calculating the reimbursable amount.

Your second question pertains to a construction of that part of section 10 which reads:

"* * * In addition to reimbursement provided herein by the Commission to the local governmental

John L. Petersen - 8.

agencies for participation by trainees, the Commission in each year shall reimburse the local governmental agencies participating in the training program for permanent fire protection personnel in the same manner as trainees for each such training program.
* * *

Specifically, you inquire whether this sentence requires that the commission reimburse local governmental agencies participating in training programs for permanent fire protection personnel exactly in the same manner as trainees. In other words, must the commission reimburse the local governmental agency for 1/2 of the sum of the four reimbursable categories or may the commission only reimburse for 1/2 of the sum of less than all four categories. For example, may the commission choose to reimburse for salary and tuition but not for travel and for room and board.

The plain and obvious meaning of language used is the safest guide to follow in construing statutes.

(Landry v. E. G. Shinner & Co., 344 Ill. 579.) The General Assembly in directing the commission to reimburse participating local governmental agencies for training programs for permanent fire protection personnel in the same manner as reimbursement

John I. Petersen - 9.

for programs for trainees used the word "shall". Ordinarily the word "shall" is mandatory in import. Weil v. Centralia Service & Oil Co., 320 Ill. App. 397, 402.

I am of the opinion that section 10 requires the commission to reimburse participating local governmental agencies for training programs for permanent fire protection personnel in the same manner as for trainees. The commission may not choose to reimburse less than the four reimbursable categories.

Very truly yours,

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