



**OFFICE OF THE ATTORNEY GENERAL**  
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ATTORNEY GENERAL

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PENSIONS:  
Illinois Municipal Retirement Fund  
Contributions for County Agencies

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Gentlemen:

I have your letters wherein you inquire whether the county board is responsible for payment of employer contributions to the Illinois Municipal Retirement Fund (IMRF) for employees of the county emergency telephone system, the county health department, the regional planning commission and the community mental health board, from taxes levied for that purpose, or whether the county board can require the governing boards of such agencies to pay IMRF contributions from special funds that support the agencies. For the reasons hereinafter stated, it is my opinion that

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the county board is ultimately responsible for the payment to IMRF of contributions on behalf of county agencies or instrumentalities that are not designated as participating instrumentalities under article 7 of the Illinois Pension Code (40 ILCS 5/7-101 et seq. (West 1994)). The county board, however, may determine from which fund such payments are to be drawn, provided that there exists statutory authority for the payment of costs relating to the employees of such agencies from each fund.

Article 7 of the Illinois Pension Code (40 ILCS 5/1-101 et seq. (West 1994)), which creates and governs IMRF, contains several provisions that are pertinent to your inquiries. The term "municipality" is defined in section 7-105 of the Code (40 ILCS 5/7-105 (West 1994)) to include counties. Sections 7-107, 7-108 and 7-109 of the Code (40 ILCS 5/7-107, 7-108, 7-109 (West 1994)) provide the following definitions:

"§ 7-107. Instrumentality. 'Instrumentality': Any body, corporate or politic, or any legal entity, other than a municipality, having power to appropriate for, or to authorize expenditures for, payment of earnings to employees from any fund or funds derived in whole or in part from taxes, assessments, fees or other revenues of a municipality; and, in counties, the several county fee offices."

"§ 7-108. 'Participating Instrumentality': (a) A political entity created under the laws of the State of Illinois, without general continuous power to levy taxes, and which is legally separate and distinct from the State of Illinois and any

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municipality and whose employees by reason of their relation to such political entity are not employees of the State of Illinois or a municipality."

"§ 7-109. Employee. (1) 'Employee' means any person who:

(a) 1. Receives earnings as payment for the performance of personal services or official duties out of the general fund of a municipality, or out of any special fund or funds controlled by a municipality, or by an instrumentality thereof, or a participating instrumentality, including, in counties, the fees or earnings of any county fee office; and

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or any instrumentality thereof, or a participating instrumentality, including aldermen, county supervisors and other persons (excepting those employed as independent contractors) who are paid compensation, fees, allowances or other emolument for official duties, and, in counties, the several county fee offices.

\* \* \*

(c) Holds an elective office in a municipality, instrumentality thereof or participating instrumentality.

\* \* \*

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from general or special funds of a county for performance of personal services or official duties within the territorial limits of the county, are employees of the county (unless excluded by subsection (2) of this Section) notwithstanding that they may be appointed by and are

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subject to the direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. This finding and this amendatory Act shall apply to all such employees from the date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund."

Section 7-132 of the Code (40 ILCS 5/7-132 (West 1994)) provides,  
in part:

"Municipalities, instrumentalities and participating instrumentalities included and effective dates.

(A) Municipalities and their instrumentalities.

(a) The following described municipalities \* \* \* and the instrumentalities thereof, shall be included within and be subject to this Article beginning upon the effective dates specified by the Board:

\* \* \* every county shall be subject to this Article \* \* \*.

\* \* \*

(B) Participating instrumentalities.

(a) The participating instrumentalities designated in paragraph (b) of this subsection shall be included within and be subject to this Article if:

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(1) an application to participate, in a form acceptable to the Board and adopted by a two-thirds vote of the governing body, is presented to the Board not later than 90 days prior to the proposed effective date; and

(3) the Board finds that the application is in conformity with its requirements, that the applicant has reasonable expectation to continue as a political entity for a period of at least 10 years and has the prospective financial capacity to meet its current and future obligations to the Fund, and that the actuarial soundness of the Fund may be reasonably expected to be unimpaired by approval of participation by the applicant.

\* \* \*

(b) The following participating instrumentalities, so long as they meet the requirements of Section 7-108 and the area served by them or within their jurisdiction is not located entirely within a municipality having more than one million inhabitants, may be included hereunder:

\* \* \*

v. Regional Planning Commissions created under Division 5-14 of the Counties Code or its predecessor law.

\* \* \*

"

Section 7-137 of the Code (40 ILCS 5/7-137 (West 1994)) provides, in part:

"Participating and covered employees.  
(a) The persons described in this paragraph  
(a) shall be included within and be subject to this Article and eligible to benefits from

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this fund, beginning upon the dates hereinafter specified:

1. Except as to the employees specifically excluded under the provisions of this Article, all persons who are employees of any municipality (or instrumentality thereof) or participating instrumentality on the effective date of participation of the municipality or participating instrumentality beginning upon such effective date.

2. Except as to the employees specifically excluded under the provisions of this Article, all persons, who became employees of any participating municipality (or instrumentality thereof) or participating instrumentality after the effective date of participation of such municipality or participating instrumentality, beginning upon the date such person becomes an employee.

\* \* \*

"

Section 7-171 of the Code (40 ILCS 5/7-171 (West 1994)) provides, in part:

"(a) Each municipality shall appropriate an amount sufficient to provide for the current municipality contributions required by Section 7-172 of this Article, for the fiscal year for which the appropriation is made and all amounts due for municipal contributions for previous years. \* \* \*

(b) For the purpose of providing monies for municipality contributions, beginning for the year in which a municipality is included in this fund, a municipality may levy a tax which shall not exceed the amount appropriated for municipality contributions.

\* \* \*

(h) The revenue derived from any such tax levy shall be used only for the purposes

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specified in this Article, and, as collected,  
shall be paid to the treasurer of the munici-  
pality levying the tax. \* \* \*"

Section 7-172 of the Code (40 ILCS 5/7-172 (West 1994)) sets forth the formula for calculating payments to be made by each participating municipality and participating instrumentality. Section 7-172.1 of the Code (40 ILCS 5/7-172.1 (West 1994)) authorizes IMRF to enforce the collection of contributions from participating municipalities and participating instrumentalities by various means, including the filing of civil suits. Lastly, section 7-172.2 of the Code (40 ILCS 5/7-172.2 (West 1994)) requires each participating municipality and participating instrumentality to make payment of Social Security contributions and Medicare taxes.

Based upon these provisions of the Act, it is clear that the county is ultimately responsible for making contributions to IMRF for any county instrumentality which does not meet the definition of a participating instrumentality. Participating instrumentalities include only those entities that are separate and distinct from the county, the employees of which are not county employees. Under section 7-132 of the Code, a regional planning commission, such as that mentioned by Mr. Ferguson, is a participating instrumentality for which the county is not required to make contributions. With respect to those entities that are agencies of the county, however, the county is respon-

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sible for paying contributions to IMRF. Therefore, it is necessary to determine whether the other entities you have cited are agencies of the county.

My predecessors have had occasion to examine the status of various entities as county agencies. Thus, Attorney General Scott advised that a county health department is a county agency (1973 Ill. Att'y Gen. Op. 108; see also County of Macon v. Board of Education of Decatur School Dist. No. 61 (1987), 165 Ill. App. 3d 1, 8) and that a community mental health board is a county agency. (1970 Ill. Att'y Gen. Op. 111.) I concur in his conclusions.

Moreover, it is my opinion that a single county emergency telephone system board (ETS board) is also a county agency. Subsection 15.4(a) of the Emergency Telephone System Act (50 ILCS 750/15.4(a) (West 1994)), which governs the establishment of ETS boards, provides, in pertinent part:

"(a) The corporate authorities of any county or municipality that imposes a surcharge under Section 15.3 shall establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that the board shall consist of not fewer than 5 members \* \* \*.

\* \* \*

"

Under subsection 15.4(a), the county not only has the authority to create a single county ETS board, but also the power to



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determine the number of members of the board and the method of their appointment.

A single county ETS board is not denominated a body politic and corporate; consequently, it could not sue or be sued in its own name. (See Mayes v. Elrod (N.D. Ill. 1979), 470 F. Supp. 1188, 1192; Lilly v. County of Cook (1978), 60 Ill. App. 3d 573, 579-80.) Although an ETS board is granted certain statutory powers which are exercisable only by its governing board, the powers and duties of a single county ETS board are defined by the county:

" \* \* \*

(b) The powers and duties of the board shall be defined by ordinance of the municipality or county, or by intergovernmental agreement in the case of a joint board. The powers and duties shall include, but need not be limited to the following:

- (1) Planning a 9-1-1 system.
- (2) Coordinating and supervising the implementation, upgrading or maintenance of the system, including the establishment of equipment specifications and coding systems.
- (3) Receiving monies from the surcharge imposed under Section 15.3, and from any other source, for deposit into the Emergency Telephone System Fund.
- (4) Authorizing all disbursements from the fund.

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(5) Hiring any staff necessary for the implementation or upgrade of the system.

\* \* \*

(50 ILCS 750/15.4(b) (West 1994).)

The funding of the ETS board is also dependent upon the county since the board has no independent powers of taxation. After approval by referendum, the county is authorized to levy a surcharge for the 9-1-1 system. (50 ILCS 750/15.3(a) (West 1994).) The county board, however, is not required to levy the full amount of the surcharge approved by referendum, but may determine at its discretion the amount to be raised:

"

\* \* \*

(e) A municipality or county may at any time by ordinance change the rate of the surcharge imposed under this Section if the new rate does not exceed the rate specified in the referendum held pursuant to subsection (c).

\* \* \*

(50 ILCS 750/15.3(e) (West 1994).)

The fiscal relationship between the ETS board and the county is similar to that which exists between the county and other county agencies. Because of the extent of control which the county board exercises over a single county ETS board through its powers to create the board, appoint its members and control the level of its funding, it is my conclusion that the board is an agency of the county.

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Although, under section 7-171 of the Code, a county is responsible for payment of contributions to IMRF for county instrumentalities, it does not require that all payments be made from the special tax levy therein provided for, or that all payments be made from the same fund. As a matter of practicality and administrative convenience, the General Assembly has apparently determined that IMRF should be required to deal with, and hold accountable, only the several counties, rather than all counties and all of the agencies of each individually. Further, it would be impractical to grant to the various county agencies, which are otherwise dependent upon the county for tax revenues, independent authority to levy taxes for payment of contributions. However, there is no particular policy interest to be served by limiting the flexibility of the several counties to fund contributions from whatever sources may be available, since it is the county boards' duty to manage county funds and county business. (55 ILCS 5/5-1016 (West 1994).)

Each of the county agencies which you, collectively, have mentioned, a county health department (55 ILCS 5/5-25013 (West 1994)), a community mental health board (405 ILCS 20/3e (West 1994)) and an ETS board (50 ILCS 750/15.4(c)(7) (West 1994)), has the authority to employ personnel and to compensate employees from the funds that are appropriated to it. Therefore, it is my opinion that funds from the surcharge supporting

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the ETS board (50 ILCS 750/15.3 (West 1994)), and the special levies supporting the health department (55 ILCS 5/5-25010 (West 1994)) and the community mental health board (405 ILCS 20/4 (West 1994)), may be allocated to the payment of employment-related expenses, including IMRF or Social Security contributions. Although a county is ultimately responsible for assuring that contributions are made to IMRF on behalf of various county agencies, the county board, in managing county funds, has the authority to determine the fund from which such contributions will be paid.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL