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ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 94-009

PENSIONS:
Optional Medicare Coverage
for School Employees

Mr. Michael L. Mory
Executive Secretary
State Retirement Systems
2101 South Veterans Parkway
Springfield, Illinois 62794-9255

Dear Mr. Mory:

I have your letter wherein you inquire whether a school district may, either by resolution or by referendum, elect to have employees who were hired prior to April 1, 1986, covered by Medicare. For the reasons hereinafter stated, it is my opinion that Medicare coverage may be extended to teachers who were hired prior to April 1, 1986, only pursuant to the provisions of section 21-105 of the Social Security Enabling Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-105; 40 ILCS 5/21-105 (West 1992)), which requires referendum approval by the members of the Teachers' Retirement System.

Prior to 1986, Social Security and Medicare coverage was optional for State and local governmental employees. The

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means by which employees and political subdivisions could exercise the option for Social Security coverage was governed then, as now, by the provisions of the Social Security Enabling Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-101 et seq.; 40 ILCS 5/21-101 et seq. (West 1992)). In the Comprehensive Omnibus Budget Reconciliation Act of 1986 (P.L. 99-272), however, Congress made the Medicare portion of the Social Security program mandatory for all State and local governmental employees who were hired after March 31, 1986, the effective date of the Act, and also made such coverage optional for employees who were hired prior to that date. (See 42 U.S.C. § 418(n).)

In response to the Federal enactment, the General Assembly amended the Social Security Enabling Act (see Public Act 84-1472, effective January 23, 1987) by adding thereto section 21-105.1 (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-105.1; 40 ILCS 5/21-105.1 (West 1992)), which provides:

"Election of optional medicare coverage. The State or any political subdivision or noncorporate public entity may elect to provide optional medicare coverage for its personnel in the same manner and subject to the same conditions as are set forth in Sections 21-103, 21-104 and 21-105 for the election of Social Security coverage." (Emphasis added.)

Section 21-103 of the Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-103; 40 ILCS 5/21-103 (West 1992)) provides, in part:

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"Political subdivision--election of coverage. (a) Any political subdivision other than a school district and other than a political subdivision which is participating in the Illinois Municipal Retirement Fund under Article 7 of this Code may, by resolution of the governing body (in the case of a township, at an annual town meeting or at a special town meeting called for that purpose), or by referendum, elect to have its employees covered by the Social Security Act.

* * *

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(Emphasis added.)

Section 21-104 of the Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-104; 40 ILCS 5/21-104 (West 1992)) provides for election of coverage for the employees of noncorporate public entities, and is clearly inapplicable to school districts. Section 21-105 of the Act provides, in part:

"Retirement systems--election of coverage. A referendum on the question of coverage under the Social Security Act may be authorized by the Governor with respect to any retirement system, or by the board of trustees of such system, or by the governing body of any political subdivision which has established a retirement system, except for a retirement system established under Article 3, 4, 5 or 6 of this Code.

Such a referendum shall also be held upon petition signed by at least 10% of the members of any retirement system except for a retirement system established under Article 3, 4, 5 or 6 of this Code. * * *

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Other provisions of section 21-105 provide for giving notice of the election and for voting by eligible employees.

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It is apparent that sections 21-103, 21-104 and 21-105 of the Social Security Enabling Act are intended to provide for the extension of Social Security coverage to different groups of public employees. Section 21-105.1 provides that Medicare coverage may be extended in the same manner as is provided for extension of Social Security coverage in these sections.

The plain language of section 21-103 applies only to political subdivisions which are not covered by a retirement system, and specifically excludes both school districts (the employees of which are covered by the Teachers' Retirement System) and political subdivisions which are participants in the Illinois Municipal Retirement Fund. Further, referenda held pursuant to section 21-103 are open to all voters of the subdivision, not just the affected employees. The Social Security Act, however, provides that a referendum on the extension of benefits to positions covered by a retirement system must be limited to eligible employees. (42 U.S.C. § 418(c).)

As previously noted, the provisions of section 21-104 of the Act are also clearly inapplicable to school districts.

The provisions of section 21-105 are generally applicable to the extension of Social Security or Medicare benefits to positions which are covered by a retirement system. In accordance with the requirements of the Social Security Act, section 21-105 provides for a referendum in which only eligible employees

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are permitted to vote. While subsection 218(n) of the Social Security Act (42 U.S.C. § 418(n)) does not specifically require such a referendum procedure for purposes of extension of Medicare coverage, the obvious intent of section 21-105.1 of the Social Security Enabling Act is to provide for the extension of such benefits only "in the same manner and subject to the same conditions" as for election of Social Security coverage.

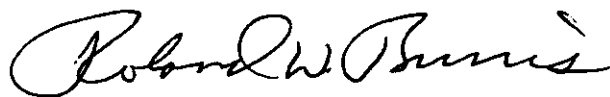
Pursuant to the terms of section 21-105, it is my opinion that Medicare coverage may be extended to teachers who were hired by their respective school districts prior to April 1, 1986, only through a referendum which is binding upon all members of the Teachers' Retirement System, and not on a district by district basis. Section 21-105 repeatedly refers to a "retirement system" and to the board of trustees of a system. Although section 21-105 does allow for action by the governing body of a political subdivision which has established a retirement system, no individual school district has established the Teachers' Retirement System. Rather, that system is established by article 16 of the Pension Code (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 16-101 et seq.; 40 ILCS 5/16-101 et seq. (West 1992)) with mandatory participation by the teachers of all school districts outside of Chicago. The definition of the term "retirement system" in section 21-102.9 of the Social Security Enabling Act (Ill. Rev. Stat. 1991, ch. 108 1/2, par. 21-102.9; 40 ILCS

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5/21-102.9 (West 1992)) does not permit application of the term to the teachers of a single district. Therefore, the referendum provided for in section 21-105 must be conducted, if at all, in the system as a whole.

It should also be noted that, for purposes of extension of coverage, the Social Security Act does permit a State to treat employees of different political subdivisions who are members of the same retirement system as if they were in separate retirement systems. (42 U.S.C. § 418(c)(6).) A provision of the Social Security Enabling Act which paralleled the Federal statute, however, was repealed by Public Act 80-1419. (See Ill. Rev. Stat. 1977, ch. 108 1/2, par. 21-125.) It must be presumed, therefore, that although the General Assembly was aware that such separate treatment is permissible under Federal law, it was its intent to require all members of a retirement system to elect Social Security or Medicare coverage, and not to permit an election of coverage on a district by district basis.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL