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SPRINGFIELD

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FILE NO. S-1361

GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Deposit of Police Pension Funds

Honorable Dennis P. Ryan
State's Attorney of Lake County
County Building
Waukegan, Illinois 60085

Dear Mr. Ryan:

I have your letter wherein you ask whether the board of trustees of a municipality's police pension fund may contract for the deposit of pension funds with a bank in which a board member owns stock. It is my opinion that the board of trustees may not contract with such a bank.

Section 3 of "AN ACT to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officials" (Ill. Rev. Stat. 1975, ch. 102, par. 3) (hereinafter cited as the Corrupt Practices Act) provides in pertinent part:

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"No person holding any office, either by election or appointment under the laws or constitution of this State, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * Any contract made and procured in violation hereof is void."

I have advised that section 3 prohibits a public official from being in a position to act or vote upon a contract for the deposit of funds with a bank in which the official owns stock. (1973 Ill. Att'y. Gen. Op. 45.) Section 3 expressly states that any contract made in violation of its provisions is void.

The board of trustees of a municipality's police pension fund has the authority to contract for the deposit of pension funds. (Ill. Rev. Stat. 1977, ch. 108 1/2, par. 3-135.) Based on my previous opinion and the express provisions of section 3 of the Corrupt Practices Act, it is clear that a member of the board of trustees who owns stock in a bank that contracts with the board for the deposit of funds violates section 3; it is also clear that the contract between the board of trustees and the bank would be void.

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Public Act 80-376 added section 3.2 to the Corrupt Practices Act. (Ill. Rev. Stat. 1977, ch. 102, par. 3.2.)

Section 3.2 reads as follows:

"Nothing contained in this Act shall preclude a contract of deposit of monies, loans or other financial services by a unit of local government or school district or community college district with a local bank or local savings and loan association, regardless of whether a member or members of the governing body of the unit are interested in such bank or savings and loan association as an officer or employee or as a holder of less than 5% of the total ownership interest. A member or members holding such a pecuniary interest in such a contract shall not be deemed to be holding a prohibited interest for purposes of this Act. Such interested member or members of the governing body must publicly state the nature and extent of their pecuniary interest during deliberations concerning the proposed award of such a contract, but shall not participate in any further deliberations concerning the proposed award. Such interested member or members shall not vote on such a proposed award. Any member or members abstaining from participation in deliberations and voting under this Section may be considered present for purposes of establishing a quorum. Consideration and award of any such contract in which a member or members are interested may only be made at a regularly scheduled public meeting of the governing body of the unit or district."

Section 3.2 permits a unit of local government to contract for the deposit funds with a bank in which a member of the unit's governing body holds less than five percent of the total ownership. (On July 1, 1978 this limit will be raised to 7.5 percent. See, Ill. Rev. Stat. 1977 Supp., ch. 102, par. 3.2.) Thus,

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section 3.2 is an exception to the general prohibition in section 3 of the Corrupt Practices Act.

It is a well-established rule of statutory construction that exceptions to statutory provisions are to be strictly construed. (People v. Chas. Levy Circulating Co. (1959), 17 Ill. 2d 168, 171.) Section 3.2 applies to units of local government. Section 1 of article VII of the Illinois Constitution defines "units of local government" as follows:

" * * * 'Units of local government' means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts."

The board of trustees of a municipality's police pension fund is a legal entity separate from the municipality. (Olds v. DeMarco (1968), 94 Ill. App. 2d 443 [Abstract of Decision].)

Although the municipality qualifies as a unit of local government, the board of trustees of the pension fund does not.

Because the board of trustees is not a unit of local government, the provisions of section 3.2 of the Corrupt Practices Act are not applicable to the board's contracts of deposit.

It is, therefore, my opinion that at present section 3 of the Corrupt Practices Act precludes the board of trustees of a

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municipality's police pension fund from depositing pension funds in a bank in which a board member owns stock.

It should be noted that section 3 has been amended by Public Act 80-1086 (Ill. Rev. Stat. 1977 Supp., ch. 102, par. 3); the provisions of the Act will become effective on July 1, 1978. The Act provides exemptions to the general prohibition in section 3. You may wish to consider whether any of these exemptions will apply to bank deposits made by the board of trustees after July 1, 1978.

Very truly yours,

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