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SPRINGFIELD

April 9, 1984

FILE NO. 84-009

COMPENSATION:

Procedure for Payment of Annual Lump Sum
Awards to County Clerks in Counties of
2,000,000 or More

Honorable Richard M. Daley
State's Attorney, Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602

Dear Mr. Daley:

I have your letter wherein you ask the following questions regarding the procedure for payment of an annual lump sum award by the State Board of Elections to the county clerk of Cook County pursuant to section 1 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Recorders and Auditors, etc." [Fees and Salaries Act] (Ill. Rev. Stat. 1983, ch. 53, par. 37a):

Honorable Richard M. Daley - 2.

1. Is the State Board of Elections required to deduct and withhold employee contributions to the County Employees' and Officers' Annuity and Benefit Fund of Cook County [the Fund] (see Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-101 et seq.) based upon the amount of the award?
2. Is Cook County responsible for the payment of employer's contributions to the Fund based upon the amount of the award?

For the reasons hereinafter stated, it is my opinion that, if the county clerk is a participant in the Fund, the State Board of Elections is required to deduct and withhold, from the annual lump sum award, the amount of employee contributions payable to the Fund. Further, it is my opinion that Cook County is responsible for the payment of employer's contributions to the Fund based upon the amount of additional compensation payable to the county clerk under section 1 of the Fees and Salaries Act.

Section 1 of the Fees and Salaries Act provides:

" * * *

In addition to but separate and apart from the compensation provided for above, the county clerk of each county that does not have a county board of election commissioners and the chief clerk of each county board of election commissioners shall receive an award of \$3,500 per annum for the additional duties required of such officer by the consolidation of elections law. The total amount required for such awards each year shall be appropriated by the General Assembly to the State Board of Elections which shall distribute the awards in annual lump sum payments to the several county clerks and chief election clerks.

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Honorable Richard M. Daley - 3.

I have previously advised that the county clerk of Cook County is entitled to an annual lump sum award under the above-quoted provision. (Opinion No. 83-015, issued September 28, 1983.)

Additionally, in opinion No. 82-034, issued October 12, 1982 (1982 Ill. Att'y Gen. Op. 99), my predecessor concluded that for counties of less than 1,000,000 (now 2,000,000) population, the State Board of Elections is required to deduct and withhold, from the annual lump sum award, certain sums, including employee contributions to the Illinois Municipal Retirement Fund, based upon the amount of the award. In opinion No. 83-014, issued September 28, 1983, I reaffirmed this conclusion, and further advised that in counties of less than 2,000,000 population, the county is required to pay employer's contributions to the Illinois Municipal Retirement Fund based on the amount of the award. Neither opinion No. 82-034 nor opinion No. 83-014, however, addressed the question of whether employee and employer contributions should be made to the County Employees' and Officers' Annuity and Benefit Fund of Cook County based on the amount of the annual lump sum award to the county clerk of Cook County.

Section 9-101 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-101) provides that, in each county of more than 500,000 inhabitants, a County Employees' and Officers' Annuity and Benefit Fund shall be established and

Honorable Richard M. Daley - 4.

maintained for the benefit of the employees and officers of the county. The County Employees' and Officers' Annuity and Benefit Fund of Cook County was established in accordance with and is governed by the provisions of article 9 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-101 et seq.). Sections 9-108 and 9-121 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, pars. 9-108, 9-121) provide that any person elected by popular vote to a county office may elect to contribute to and participate in the Fund. It is my understanding that the incumbent county clerk of Cook County has elected to participate in the Fund, and, pursuant to subsection 9-110(a) of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-110), is deemed a "future entrant" for purposes of article 9 of the Code.

Section 9-170 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-170) provides in pertinent part:

"Contributions for age and service annuities for present employees, future entrants and re-entrants. (a) Beginning on the effective date * * * as to a future entrant in paragraph (a) of Section 9-110 * * * there shall be deducted and contributed to this fund 3 1/4% of each payment of salary for age and service annuity until July 1, 1947. Beginning July 1, 1947 and prior to July 1, 1953, 5% and beginning July 1, 1953, and prior to September 1, 1971, 6%; and beginning September 1, 1971, 6 1/2% of each payment of salary of such employees shall be deducted and contributed for such purpose. * * *

(b) Concurrently with each employee contribution, the county shall contribute beginning

Honorable Richard M. Daley - 5.

on the effective date and prior to July 1, 1947, 5 3/4%, and beginning on July 1, 1947 and prior to July 1, 1953, 7%; and beginning on July 1, 1953, 6% of each payment of such salary until the employee attains age 65.

(c) Each present employee contribution made prior to the date the age and service annuity for such employee is fixed, each future entrant contribution, and each corresponding county contribution shall be allocated to the account of and credited to the employee for whose benefit it is made." (Emphasis added.)

In addition to the basic age and service annuity contributions required under section 9-170, other contributions are required for certain employees by subsequent provisions of article 9 of the Illinois Pension Code. (See, e.g., Ill. Rev. Stat. 1983, ch. 108 1/2, pars. 9-171, 9-173, 9-176, 9-177.) Mandatory contributions to the Fund are, in general, specified as a percentage of each payment of salary to the participant. Section 9-112 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 9-112), which defines "salary", provides in pertinent part:

"* * * 'Salary': Annual salary of an employee under this Article as follows:

(a) * * * beginning on July 1, 1957, if salary or wages is appropriated, fixed or arranged on an annual basis, the actual sum payable during the year if the employee worked the full normal working time in his position, at the rate of compensation, exclusive of overtime, appropriated or fixed as salary or wages for service in the position;

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Honorable Richard M. Daley - 6.

Section 1 of the Fees and Salaries Act provides that the county clerk shall receive an award of \$3500 per annum for the additional duties required by the consolidation of elections law. This annual lump sum award is compensation attached to the office of county clerk. (See 1982 Ill. Att'y Gen. Op. 99, 100-101.) The term "salary" is synonymous and interchangeable with "compensation". (Accord Treu v. Kirkwood (S. Ct. Cal. 1954), 268 P.2d 482, 486.) Consequently, the award, which is compensation fixed on an annual basis for the performance of certain duties by the county clerk, is "salary" for which contributions are payable on behalf of the clerk to the County Employees' and Officers' Annuity and Benefit Fund of Cook County.

As noted above, the State Board of Elections is required to deduct and withhold employee contributions to the Illinois Municipal Retirement Fund from the annual lump sum award payable to county clerks and chief clerks of county boards of election commissioners in counties of less than 2,000,000. (1982 Ill. Att'y Gen. Op. 99, 101-102; opinion No. 83-014, at 3.) There is no statutory or other basis upon which to distinguish the duty of the State Board of Elections with regard to the payment of an annual lump sum award to the county clerk of a county of 2,000,000 or more inhabitants. Therefore, it is my opinion that the State Board of Elections is required

Honorable Richard M. Daley - 7.

to deduct and withhold, from the annual lump sum award to the county clerk of Cook County, the employee contributions to the County Employees' and Officers' Annuity and Benefit Fund of Cook County payable upon the amount of the award. Such contributions should be forwarded to Cook County for payment into the Fund. See 1982 Ill. Att'y Gen. Op. 99, 103.

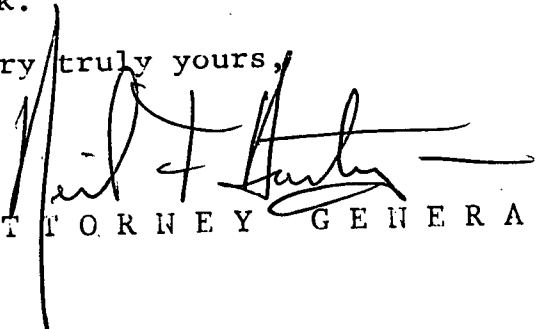
In response to your second question, section 9-170 of the Illinois Pension Code, as set out above, requires the county to make employer contributions to the County Employees' and Officers' Annuity and Benefit Fund in the amount provided therein. Other provisions of article 9 of the Illinois Pension Code which require additional employee contributions to be made to the Fund also require concurrent employer contributions to be made in the amounts specified by statute. (See, e.g., Ill. Rev. Stat. 1983, ch. 108 1/2, pars. 9-171, 9-173, 9-176, 9-177.)

In opinion No. 83-014, I advised that where a county clerk or chief clerk of a county board of election commissioners in a county of less than 2,000,000 is required to make employee contributions to the Illinois Municipal Retirement Fund based upon the amount of the annual lump sum award payable under section 1 of the Fees and Salaries Act, the county is under a reciprocal duty to make employer contributions as provided by statute. (Opinion No. 83-014, at 7.) The provisions of article 9 of the Illinois Pension Code relating to

Honorable Richard M. Daley - 8.

employer contributions to the County Employees' and Officers' Annuity and Benefit Fund of Cook County do not differ materially from those provisions governing the Illinois Municipal Retirement Fund. Each provides for concurrent employee and employer contributions to the Fund based on compensation earned by the participant. Therefore, it is my opinion that Cook County is required to pay employer's contributions to the County Employees' and Officers' Annuity and Benefit Fund of Cook County based on the amount of the annual lump sum award payable to the county clerk.

Very truly yours,



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