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ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
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No. S-793

**PENSIONS:
Definition of Instrumentality
Under the Social Security
Enabling Act**

Carl H. Rolewick, Administrator
Attorney Registration Commission
of the Supreme Court of Illinois
203 North Wabash Avenue
Chicago, Illinois 60601

Dear Mr. Rolewick:

This responds to your request for an opinion on the following question, as stated in your letter:

"Are the employees of the Attorney Disciplinary System, established by Rules 751-756 of the Supreme Court of Illinois, employees of an instrumentality of the State of Illinois within the meaning and intent of the Social Security Enabling Act, Ill. Rev. Stat., ch. 108 1/2, Art. 21, and can an agreement for the purpose of extending the benefits of the Federal Social Security insurance program to those employees be entered into under the provisions of that Act and Section 218 of the Social Security Act (42 U.S.C.A. §418)?"

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You further state in part in your letter that:

"The Attorney Disciplinary System was created by Illinois Supreme Court Rules 751-756, dated January 24, 1973, and effective February 1, 1973
* * *

The function of the Disciplinary System is to maintain the Master Roll of the Attorneys and to investigate into and prosecute complaints against Illinois attorneys, whose conduct might tend to defeat the administration of justice or to bring the courts or legal profession into disrepute.

The Administrator of the System is appointed by the Supreme Court of Illinois, but all other employees (investigators, attorneys, secretaries, clerks, bookkeepers, etc.) are solely under the jurisdiction of the Administrator.

The Commission obtains funds from fees annually assessed against Illinois attorneys. An attorney who fails to remit his annual fee is not permitted to practice law in the State of Illinois. The Commission maintains its own financial records, including disbursements for expenditures and payroll, and collection of fees."

Section 3121(b)(7) of the Federal Insurance Contribution Act (26 U.S.C. 3121(b)(7)) excludes from Federal Social Security coverage employees of a State and a political subdivision of a State and any instrumentality that is "wholly owned" by a State or political subdivision. For such employees to receive Social Security benefits, a special voluntary agreement must be entered

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into by the State with the Secretary of the United States Department of Health, Education and Welfare as provided in section 218 of the Federal Social Security Act. (42 U.S.C. 418.) You have advised us that on June 1, 1973, the Internal Revenue Service ruled that the Attorney Registration Commission ^{1/} "is a wholly owned instrumentality of the State of Illinois" within the meaning of section 3121(b) (7) of the Federal Insurance Contribution Act and that Federal Social Security coverage can thus be obtained only by an agreement under section 218 of the Social Security Act.

However, this exclusion of Commission employees under section 3121(b) (7) of the Federal Insurance Contribution Act does not guarantee automatic inclusion by special agreement under section 218 of the Federal Social Security Act. Under section 218 a State by its law must authorize or enable the participation of employees of the State, its political subdivisions and instrumentalities. Whether employees may be covered by agreement depends upon the specific provisions and definitions of the

^{1/} By order of the Supreme Court, dated May 17, 1973, the name of the Attorney Disciplinary System was changed to the Attorney Registration Commission.

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State's law.

Under the Social Security Enabling Act (Ill. Rev. Stat. 1973, ch. 108 1/2, pars. 21-101 through 21-313), the Social Security unit of the State Employees' Retirement System of Illinois is authorized to enter into an agreement with the Secretary of the Department of Health, Education and Welfare on behalf of the State of Illinois for the specific purpose provided by section 21-119 of the Social Security Enabling Act. (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 21-119.) This provision reads in pertinent part as follows:

"* * * [F]or the purpose of extending the benefits of the Federal Social Security insurance program to employees of the State of Illinois, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing, or to members of a Retirement System, with respect to services specified in such agreement, which constitute 'employment'."

An "instrumentality" is defined in section 21-107 of the Act as follows:

"A juristic entity which is legally separate and distinct from the State of Illinois and its political subdivisions and whose employees are not by virtue of their relation to such

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juristic entity employees of the State of Illinois or such political subdivisions."

There are no definitive cases on the meaning of either "instrumentality" or "juristic entity". The word "juristic", in the common sense, means: relating to, created by or recognized in law (Webster's New Third Int'l. Dict., p. 1227); of or pertaining to law or legality (American Heritage Dict., p. 711); pertaining or belonging to or characteristic of jurisprudence, or a jurist, or the legal profession (Black's Law Dict., 4th ed., p. 993.) An "entity" is a particular and discrete unit (American, supra, p. 437); being of independent, separate or self-contained existence (Webster's, supra, p. 758); a real being (Black's, supra, p. 626.) In the context of section 21-107, an instrumentality of the State might thus be defined as an independent, separate, or discrete unit of the State, which relates to, was created by or is recognized in law.

In State v. Des Moines County, 149 N.W. 2d 288 (Iowa 1967), the Iowa Supreme Court dealt with the definition of "juristic entity" under a statute similar to Illinois'. In that case the court determined that a drainage district came within

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the classification of a political subdivision or an instrumentality of the State, or one of its political subdivisions or instrumentalities. In arriving at this conclusion it noted that a drainage district by statute had power to levy special assessments on lands located in the district; that the special assessments could be spent only on order of the Trustees of the district; that the Trustees were vested with the power to acquire lands by conveyance, lease or eminent domain and further, that they could effect repairs and improvements, enter into contracts, incur indebtedness, authorize payment for the same and issue bonds. It also noted that an organized drainage district was a political subdivision of the county in which it was located.

My predecessors have issued three opinions which deal with the definition of instrumentality as used in the Social Security Enabling Act, supra. In an opinion issued June 29, 1953, (1953 Op. Atty. Gen. 159), the Attorney General held that a multiple-county health department was an instrumentality within the meaning of the Social Security Enabling Act, supra. He noted that although such a department did not have authority to levy taxes and was dependent upon the respective county boards for funds with which to operate, it was authorized by statute to

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enforce all State laws pertaining to the preservation of health and all county and municipal ordinances, except as otherwise specifically provided. It was also authorized to appoint officers and employees, prescribe their powers and duties, fix their compensation and authorize payment of the same, and all other department expenses from the county health fund of the counties concerned.

In an opinion issued March 22, 1956, (1956 Op. Atty. Gen. 101) the Attorney General determined that a board of managers of the community building fund of a township established as provided by statute, was an instrumentality for the purpose of the Social Security Enabling Act. He stated at page 103:

"Since the board of managers of the township community buildings, when established pursuant to referendum, issue the bonds, levy the taxes, hire the employees, disburse all funds, and prescribe the rules and regulations for use of the community buildings, all separate and independent of any control by the electors of the town at the town meeting or by any other officer of the town, it would seem that such board of managers is a quasi corporation or juristic entity which is legally separate and distinct from the township. * * * "

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In an opinion issued October 23, 1958, (1958 Op. Atty. Gen. 244), the Attorney General determined that a school district was not an instrumentality of a city where the school district was still operating under a special charter issued to the city, which provided that the plenary power over the management and operation of the public schools in said city were vested in a common council of the city and the city itself was denominated the school district. The school district was rather a branch of the city government. It was not a juristic entity and therefore not an instrumentality.

The prior Attorney General opinions indicate that an instrumentality for purposes of the Illinois Social Security Enabling Act is a quasi-corporate entity created by law. It should also be noted that the statutory definition requires that such an entity be "separate and distinct from the State of Illinois and its political subdivisions". The statutorily defined characteristics and limitations negate the possibility that an instrumentality can be the creation of a branch of State government lacking legislative power such as the executive or judicial branches; nor can an instrumentality be the creation

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of a political subdivision unless authorized by action of the General Assembly. An instrumentality under the State's Social Security Enabling Act must be independent and beyond control of the State of Illinois, its political subdivisions and its branches. Of course, the powers and duties of an instrumentality may be modified by the same legislative process or in accordance with the legislation by which it was created. A State constitution by self-executing provisions may create an entity enjoying a separate and autonomous constitutional status. However, the Attorney Registration Commission enjoys no such status, not having been created by constitution.

The General Assembly has the sole duty and responsibility of legislation. (People v. Barnett, 344 Ill. 62.) There is no legislative authority in the judicial branch to perform legislative functions which are within the purview of the General Assembly. (Parison v. Granite City Steel Co., 71 Ill. App. 2d 53.) This lack of power in the judiciary obviously extends to the creation of instrumentalities which, by definition, must be "separate and distinct from the State of Illinois and its

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political subdivisions". The judiciary is a branch of State government and any entity created by it in the exercise of rule-making authority necessarily would not be "separate and distinct from the State of Illinois".

Although the Supreme Court may properly hire employees and otherwise act to carry out the functions of the judicial branch, it does not enjoy the legislative power reposed by the people in the General Assembly to create by law a quasi-corporate or juristic entity which is legally separate and distinct from the State of Illinois. To conclude otherwise would be to ignore the doctrine of separation of powers.

Therefore, I conclude that the Commission is not an instrumentality of the State of Illinois, as defined in the Social Security Enabling Act, supra, but rather that it is an agency of the judicial branch of the State of Illinois.

There have been brought to my attention certain court decisions of other States holding that the judiciary branches in particular States have inherent power to regulate and discipline the attorneys practicing law therein or inherent

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power to integrate the bar. The authority of the judicial branch of government of a particular State to provide for the regulation of the bar and the administration of justice, of course, must be determined by reference to the statutory and constitutional law of such State. The question here presented is entirely different, and therefore, I feel that such decisions provide no guidance. Here the question under consideration is whether the Commission is an instrumentality, as defined by a particular Illinois statute dealing specifically with the subject of Social Security coverage.

As I have previously determined, the Attorney Registration Commission does not come within this definition and the Commission is not an "instrumentality" as defined in section 21-107 of the Illinois Social Security Act. Therefore, the employees of the Commission cannot be covered by an agreement with the Social Security unit of the State Employees' Retirement System of Illinois premised on that assumption.

I express no opinion as to other avenues which might be pursued under the Illinois Social Security Enabling Act for

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extending the benefits of the Federal Social Security insurance program to the Commission employees, assuming altered conditions and procedures.

Very truly yours,

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