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SPRINGFIELD

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FILE NO. S-1250

SCHOOLS AND SCHOOL DISTRICTS:
Whether Employee Contributions
to Teachers' Retirement System
Which Are Paid by School Boards
Constitute Wages Subject to
Federal Income Tax Withholding

Roy A. Baker, Director
Teachers' Retirement System
of the State of Illinois
450 Iles Park Place
Springfield, Illinois 62706

Dear Mr. Baker:

I have your letter wherein you request that I review an assumption that was stated in the last paragraph of opinion No. S-676. (1974 Ill. Att'y. Gen. Op. 47.) That opinion advised that the powers of a school board with respect to setting salaries for its employees and providing fringe benefits were sufficiently broad to permit a school

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board to make employee contributions to the Teachers' Retirement System on behalf of its employees. In the last paragraph of the opinion it was assumed that employee contributions made by a school board were part of the employees' wages subject to federal income tax withholding. You ask that I review that assumption.

The assumption was made without considering section 414(h) of the Internal Revenue Code (26 U.S.C.A. 414(h)) which became effective January 1, 1974, only seven days before the issuance of opinion No. S-676. Section 414(h) reads as follows:

"Tax treatment of certain contributions:

- (1) In general. Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed--
 - (A) To an employees' trust described in section 401(a), or
 - (B) Under a plan described in section 403(a) or 405(a), shall not be treated as having been paid by the employer if it is designated as an employee contribution.
- (2) Designation by units of government.

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For purpose of paragraph (1), in the case of any plan established by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions."

Upon receipt of your letter this office requested a ruling from the Internal Revenue Service as to whether, in light of section 414(h), employee contributions to the Teachers' Retirement System made by employing school boards are wages subject to federal income tax withholding. In a ruling dated May 31, 1977, the Internal Revenue Service advised that these contributions are not wages subject to federal income tax withholding. Accordingly, the assumption made in the last paragraph of opinion No. S-676 should be disregarded.

In summary, as I advised in opinion No. S-676, the powers of a school board with respect to setting salaries for its employees and providing fringe benefits, are sufficiently broad to permit a school board to make employee

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contributions to the Teachers' Retirement System on behalf of its employees; furthermore, contributions made on behalf of the employees by the school board are to be treated as salary for the purposes of determining the amount payable to the Teachers' Retirement System. In accordance with the Internal Revenue Service ruling referred to herein, such contributions are not wages subject to federal income tax withholding.

Very truly yours,

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