

1991 Ill. Atty. Gen. Op. 53 (Ill.A.G.), 1991 WL 495511

Office of the Attorney General

State of Illinois
File No. 91-025
June 6, 1991

PENSIONS:

*1 Veterans Assistance Commission Employees

Honorable Joseph R. Navarro
State's Attorney, LaSalle County
707 Etna Road, Room 251
Ottawa, Illinois 61350

Dear Mr. Navarro:

I have your letter wherein you inquire whether the superintendent and other employees of a county veterans assistance commission may properly be considered to be county employees, for purposes of participation in the Illinois Municipal Retirement Fund. For the reasons hereinafter stated, it is my opinion that such employees may be considered county employees, for the limited purpose of determining participation in that Fund.

You have noted that the opinion in *Makowicz v. County of Macon* (1980), 78 Ill.2d 308, indicated that the superintendent of a county veterans assistance commission and his employees were not county employees. Also, you have noted that section 10 of the Assistance to Indigent Veterans Act (Ill.Rev.Stat.1989, ch. 23, par. 3090) was amended by Public Act 85-1188, effective January 1, 1989, to provide:

“ * * *

* * * The superintendent and his employees shall be employees of the Veterans Assistance Commission, and no provision in this section or elsewhere in this Act shall be construed to mean that they are employees of the county. * * * ”

In *Makowicz v. County of Macon*, the issue addressed was whether the county board, rather than the superintendent, had the authority to discharge the secretary of a veterans assistance commission. The court held that the superintendent, and not the county board, had the authority to do so. That case, however, did not address or resolve any other issue regarding the relationship between veterans assistance commission employees and the county.

Public Act 85-1188 was intended to resolve questions over the relative powers of veterans assistance commissions and county boards. (Remarks of Reps. Mautino and Hultgren, House Debate on Senate Bill 1456, May 11, 1988, at 37-38 and June 15, 1988, at 72.) To that end, it enacted provisions regarding county board control over certain rules, salaries and expenses of such commissions, as well as the provision quoted above, which gives the commission control over its employees. The amendment, however, did not address the pension rights or liabilities of commission employees.

Subsection 7-109(3) of the Illinois Pension Code (Ill.Rev.Stat.1989, ch. 108½, par. 7-109(3)) defines the term “employees of the county”, for purposes of participation in the Illinois Municipal Retirement Fund (IMRF), as follows:

“ * * *

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from general or special funds of a county for performance of personal services or official duties within the territorial limits of their county, are employees of the county (unless excluded by subsection (2) of this Section) notwithstanding that they may be appointed by and are subject to the direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. * * *

*2 Employees of counties are generally required to participate in IMRF. (See, Ill.Rev.Stat.1989, ch. 108½, pars. 7–105, 7–109, 7–137.) It has been held that the operative language of this subsection is the first sentence thereof, which provides that all persons who receive earnings from county funds are considered “employees”, for purposes of the Pension Code, while the sentence relating to “the usual common law rules” is explanatory, rather than limiting. ([Board of Election Commissioners v. County of Peoria \(1989\)](#), 182 Ill.App.3d 567.) Therefore, based upon the express language of section 7–109 of the Pension Code, the superintendent and his employees, because they receive compensation from funds appropriated by the county board (see Ill.Rev.Stat.1989, ch. 23, par. 3090), have properly been considered employees of the county, for purposes of participation in the IMRF, even though they are appointed by, and are subject to the direction of, the veterans assistance commission.

In this regard, however, I note that the participation of veterans assistance commission employees in the Illinois Municipal Retirement Fund (IMRF) was recently addressed by Public Act 86–1488, effective January 14, 1991. Public Act 86–1488 amended section 7–132 of the Illinois Pension Code (Ill.Rev.Stat.1989, ch. 108½, par. 7–132) to include the following provisions:

“ * * *

(d) In the case of a Veterans Assistance Commission whose employees were being treated by the Fund on January 1, 1990 as employees of the county served by the Commission, the Fund may continue to treat the employees of the Veterans Assistance Commission as county employees for the purposes of this Article, unless the Commission becomes a participating instrumentality in accordance with subsection (B) of this Section.

(B) Participating instrumentalities:

(b) The following participating instrumentalities so long as they meet the requirements of Section 7–108, may be included hereunder:

xix. Veterans Assistance Commissions established under Section 9 of the Assistance to Indigent Veterans Act that serve counties with a population of less than 1,000,000 and whose employees were contributing to the fund on January 1, 1990.

Following the effective date of Public Act 86–1488, therefore, the employees of a veterans assistance commission may continue to be treated as county employees, for purposes of participation in the IMRF, or, at the election of the commission, may become participants as employees of the commission as a participating instrumentality under the Code.

Respectfully yours,

ROLAND W. BURRIS
Attorney General

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