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November 21, 1983

FILE NO. 83-025

PENSIONS:
Effect of Public Act 83-507 upon
Section 7-173.2 of the
Illinois Pension Code

Honorable Harry "Bus" Yourell
Illinois State Representative
Chairman, Commission to Study County Problems
Suite 411, Lincoln Towers
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Dear Representative Yourell:

I have your letter in which you inquire regarding the implementation of Public Act 83-507, effective January 1, 1984, which amends section 7-173.2 of the Illinois Pension Code (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-173.2) to require counties and other participating municipalities and instrumentalities to "pick up" certain employee contributions to the Illinois Municipal Retirement Fund, beginning July 1, 1984. You ask

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whether a county may pick up such contributions by a reduction in the salary or earnings of the employee. For the reasons hereinafter stated, it is my opinion that Public Act 83-507 was not intended to prohibit a county or other participating municipality or instrumentality from picking up employee contributions to the Illinois Municipal Retirement Fund by a reduction in the employee's earnings, an offset against future earnings increases or a combination of both, as is currently authorized by section 7-173.2, nor does the Act have such an effect.

Section 7-173.2 of the Illinois Pension Code is one of several statutory provisions enacted by the General Assembly in response to the Federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), and particularly subsection 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), which was added by that Act. Subsection 414(h) of the Internal Revenue Code provides:

"(h) 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) [26 USC § 401(a)], or

(B) under a plan described in section 403(a) or 405(a) [26 USC §§ 403(a) or 405(a)], shall not be treated as having been made by the employer if it is designated as an employee contribution.

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(2) Designation by units of government. For purposes 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." (Emphasis added.)

Employee contributions to a governmental pension plan which are picked up by an employer are excluded from the employee's gross income until such time as they are distributed or made available to the employee (Rev. Rul. 77-462, 1977-2 C.B. 358), thus resulting in a tax deferment and benefit for those persons covered by a governmental pension plan.

The Illinois Municipal Retirement Fund is governed by article 7 of the Illinois Pension Code (Ill Rev. Stat. 1981, ch. 108 1/2, par. 7-101 et seq.). For purposes of article 7, the term "municipality" is defined to include counties. (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-105.) Section 7-132 of the Illinois Pension Code (Ill. Rev. Stat. 1982 Supp., ch. 108 1/2, par. 7-132) provides that every county of less than 1,000,000 inhabitants shall participate in the Fund, and thus, such counties are "participating municipalities" for purposes of article 7 (Ill. Rev. Stat. 1981, ch. 108 1/2, par. 7-106). Section 7-173.2 of the Illinois Pension Code currently provides in pertinent part:

"Each participating municipality and each participating instrumentality may elect, for all of its employees, to pick up the employee contributions required by subparagraphs 1 and 3 of subsection (a) of Section 7-173 and, in the case of sheriff's law enforcement employees, required by Section 7-173.1. The pick up may be for employee contributions on earnings received by employees after December 31, 1981 and shall be applicable to the contributions on total earnings paid in any month. The decision to pick up contributions shall be made by the governing body. If contributions are picked up they shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The employee contribution shall be paid from the same source of funds as is used in payment of earnings to the employee and may not be paid from funds raised by the tax levy authorized by Section 7-171. The contributions may be picked up by a reduction in earnings payment to employees, by an offset against future earnings increases or by a combination of a reduction in earnings payments to employees and offset against a future earnings increases. If the employee contributions are picked up they shall be considered as earnings under Section 7-114. The pick up shall not apply to contributions made for additional contributions under subsection (a) 2 of Section 7-173, authorized leave of absence under subsection (a) 4 of Section 7-139, out-of-state service under subsection (a) 6 of Section 7-139, retroactive service under subsection (a) 7 of Section 7-139 or repayments of separation of benefits under Section 7-109. * * * For all other purposes of this Article 7, the picked up employee contributions shall be treated in the same manner and to the same extent as employee contributions which are not picked up and shall be considered as employee contributions in computing benefits paid under this Article 7." (Emphasis added.)

Public Act 83-507 added the following language to section 7-173.2:

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"Beginning July 1, 1984, the pick up of employee contributions shall cease to be optional. Each participating municipality and participating instrumentality shall pick up the employee contributions required by subparagraphs 1 and 3 of subsection (a) of Section 7-173 and, in the case of sheriff's law enforcement employees, contributions required by Section 7-173.1, for all compensation earned after such date.

* * *

"

(Emphasis added.)

You state that, because the amendatory language does not expressly authorize the pick-up of employee contributions by salary reduction, questions have arisen as to whether pick-up by salary reduction will be permissible after June 30, 1984.

In construing an amendatory act, the object, as in the case of original acts, is to determine the intent of the General Assembly in its enactment. (People v. Thompson (1972), 3 Ill. App. 3d 684, 689.) In seeking to ascertain the intent of an amendment, not only the language used but the object to be attained will be considered. (People ex rel. Adamowski v. Daley (1959), 22 Ill. App. 2d 87, 93-4.) It is presumed that every amendment of a statute is made to effect some purpose, and effect must be given the amended law in a manner consistent with the amendment. McLaughlin v. People (1949), 403 Ill. 493, 501.

It is apparent, from a review of Public Act 83-507, that the sole purpose of the amendatory language is to make the

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pick-up of employee contributions to the Illinois Municipal Retirement Fund mandatory, rather than discretionary, beginning July 1, 1984. There is no indication in the language of Public Act 83-507 that it was intended to repeal the statutory authority of a participating municipality to effectuate the pick-up of employee contributions by a reduction in earnings payments to the employee, or as is otherwise currently provided in section 7-173.2 of the Illinois Pension Code. In this regard it is significant that the portion of section 7-173.2 which authorizes the recoupment of picked up amounts is neither amended nor specifically addressed by the amendatory language of Public Act 83-507. It is, of course, axiomatic that all portions of an act which are not repealed, deleted or altered by an amendment are retained in the amended act. (See Kimmel v. Eielson (1950), 406 Ill. 202, 205-06.) Therefore, construing Public Act 83-507 in accordance with the canons of statutory construction stated above, and giving effect to the intent of the amendment, it is my opinion that a county or other participating municipality or instrumentality will continue to possess the authority, after June 30, 1984, to pick up employee contributions to the Illinois Municipal Retirement Fund by a reduction in an employee's earnings payments, an offset against future earnings increases or a combination of both.

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Moreover, this interpretation of the intent of Public Act 83-507 is supported by reference to the transcript of debates on House Bill 860, which was subsequently enacted as Public Act 83-507. In explaining the purpose of House Bill 860, Representative Saltsman, House sponsor of the bill, stated:

" * * *

'* * * This Bill defers the federal income tax for these employees and their pension contributions. This Bill gives these employees the same privilege as other public employees and as we have here in the General Assembly in our pension. It's nothing more than the deferred payment of federal income tax under pensions. Most of us have it already.'

* * *

(Emphasis added.) (Remarks of Representative Saltsman, May 10, 1983, House Debate on House Bill No. 860, at 2.) "

Similarly, Senator Davidson, the Senate sponsor of House Bill 860, explained its purpose to the Senate as follows:

" * * *

* * * [This] bill does exactly what it says plus it allows the paper pickup for [the] Illinois Municipal Retirement Fund. This has support of the Pension Laws Commission. This allows paper pickup only, there's no money involved.

* * *

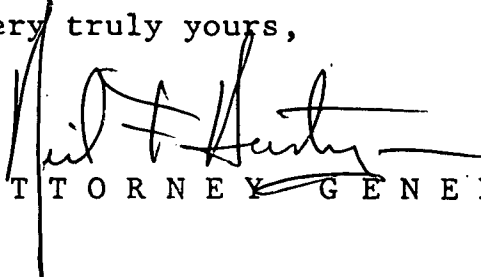
(Emphasis added.) (Remarks of Senator Davidson, June 22, 1983, Senate Debate on House Bill No. 860, at 198.) "

Based on the statements of the bill's sponsors, it is clear that it was not the intent of the General Assembly, in

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enacting House Bill 860, to require a participating municipality or instrumentality to pick up employee contributions to the Illinois Municipal Retirement Fund without being permitted a concomitant power to recoup the amount of such contributions from the employee. Rather, these statements clearly indicate that the pick-up of employee contributions was to be a "paper pickup only", which would result in no additional expense to the participating employer. To construe Public Act 83-507 as eliminating the authority of a participating municipality to recoup such amounts as provided in section 7-173.2 of the Illinois Pension Code would defeat the intent of the General Assembly in its enactment, a result contrary to the fundamental principles of statutory construction.

Very truly yours,


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