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STATE OF MAINE

Inter-Departmental Memorandum Date May 3, 1977

To Gary R. King, Field Examiner III Dept. Maine State Retirement System

From Kay R. H. Evans, Assistant Dept. Attorney General

Subject Newport Public Library Association

Your memo of March 23, 1977, asks for our opinion on the question whether the Newport Public Library Association constitutes a "political subdivision" for the purposes of 5 M.R.S.A. Chapter 103, so that its employees might obtain Social Security coverage by direct agreement with the Maine State Retirement System. We answer in the affirmative.

Section 1222, sub-§ 6 defines political subdivision:

6. Political subdivision. The term "political subdivision" includes an instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer and school districts and associations of municipalities, or an instrumentality of the State and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision.

Thus, in order to fall within the definition, an entity must be both an "instrumentality" of one of the enumerated bodies and sufficiently separate therefrom.

From its bylaws, a copy of which you submitted, the Newport Public Library Association appears to be an instrumentality of the Town of Newport. The Association performs functions and provides services which the Town might itself provide, see 27 M.R.S.A. § 101. Any resident of the Town may consider him or herself to be a member of the Association. The Chairman of the Board of Selectmen serves on the Association's Board of Trustees and the bylaws require submission of annual financial and activity reports to the Selectmen and the Town.

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The Association also is sufficiently independent of the Town and of the State to meet the requirements of the definition. Though the Chairman of the Board of Selectmen serves as President of the Association's Board of Trustees, he serves in an ex officio capacity. Though the Association reports to the town meeting, its own annual and other business meetings are separately conducted. The Town of Newport probably provides financial assistance to the library, but such assistance has no implications of control of the Association. See 27 M.R.S.A. § 106. Under its bylaws, the Association's Trustees manage its affairs independently of town approval, and hold authority to make all library budget, personnel and general management decisions. Library staff are employed by the Association.

From the foregoing and on the basis of the information supplied by you, the Newport Public Library Association lies within the class intended to be reached by Chapter 103 and may obtain Social Security coverage for its employees by direct agreement with the Maine State Retirement System.

KAY R. H. EVANS
Assistant Attorney General

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