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Retirement Political Subdivision Qualification
5 M.R.S.A. § 1222-6

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February 16, 1978

To: W. G. Blodgett, Executive Director, Maine State Retirement System

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

Re: Auburn Public Library

By memo of January 26, 1978, you have asked for an opinion whether the Auburn Public Library qualifies as a "political subdivision" under 5 M.R.S.A. § 1222(6) for purposes of extending Social Security benefits to its employees by a direct agreement with the Maine State Retirement System. The answer is affirmative.

Section 1222(6) provides:

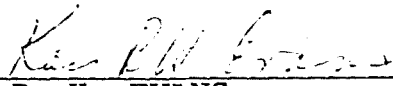
6. Political subdivision. The term "political subdivision" includes an instrumentality of the State of Maine, of one or more of its political subdivisions, the University of Maine, academies, water, sewer and school districts and associations of municipalities, or an instrumentality of the State and 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 qualify, the Auburn Public Library must be an "instrumentality" as specified and, at the same time, function with sufficient independence. From its bylaws, it appears that the Library meets both criteria. It performs functions and provides services which the town itself might provide, see 27 M.R.S.A. § 107. The Mayor of Auburn serves ex officio on the Board of Trustees and, with the Auburn City Manager and the Superintendent of Auburn Schools, ex officio as a corporator. After 1950, new

orporators had to be residents and citizens of the City of Auburn. All Auburn residents are entitled to free use of the Library.

It also appears from the bylaws that the Library conducts its business independently from the Town, managing its financial and personnel matters, including employment of staff, and possessing full responsibility and authority for actual operation of the Library.

Accordingly, the Auburn Public Library constitutes a political subdivision for purposes of obtaining Social Security coverage for its employees by direct agreement with the Retirement System, according to the provisions of Chapter 103 of Title 5.


KAY R. H. EVANS
Assistant Attorney General

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