

# MAINE STATE LEGISLATURE

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STATE OF MAINE

80-82

Inter-Departmental Memorandum Date May 7, 1980

To Gary King, Field Examiner III

Dept. Maine State Retirement System

From Paul F. Macri, Assistant

Dept. Attorney General

Subject Tri-County Regional Special Education Service.

You have requested that we review the organization called Tri-County Regional Special Education Service for purposes of determining whether it is a separate "political subdivision" for purposes of extending Social Security benefits to the employees of such unit by direct agreement with the Maine State Retirement System, as provided under the provisions of 5 M.R.S.A. Chapter 103.

5 M.R.S.A. § 1222(6) defines "political subdivision" as follows:

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, associations and 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.

5 M.R.S.A. § 1222(6).

In order to qualify for Social Security coverage, therefore, a "political subdivision" must meet the following for test:

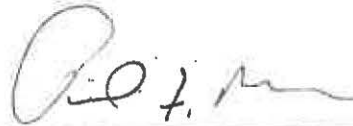
1. It must be an instrumentality of the State of Maine or of one or more of its political subdivisions;
2. It must be a juristic entity;
3. It must be an entity legally separate and distinct from the State or subdivision;
4. Its employees may not, by virtue of their relationship to the entity, be employees of the State or subdivision.

It is our opinion that Tri-County Regional Special Education Service does not meet these four tests and is not a "political subdivision" for purposes of Social Security benefits.

We think that Project Lodestone is an instrumentality of political subdivisions of the State, in that it appears to have been organized under 20 M.R.S.A. § 3125(3), which allows school administrative units to provide regional programs or supportive services for exceptional children. The members of the Board of Directors of Tri-County Regional Special Education Service are the superintendents of the administrative units and one person other than the superintendent representing each administrative unit. The functions of the Tri-County Regional Special Education Service appear to be governmental in the sense that they administer to educational needs in the area and are functions which the schools themselves may ordinarily perform. See 20 M.R.S.A. § 3125(1).

We conclude, however, that Tri-County Regional Special Education Service is not a legal entity separate and distinct from its member administrative units. We reach this conclusion on the basis of the lack of evidence, from the materials provided us, that the Tri-County Regional Special Education Service is a corporation or an entity with any specific powers independent of the powers of its member administrative units. It is not constituted a separate entity by its enabling legislation, nor do we find it has independent powers, such as the power to own real and personal property and to sue and be sued that an ordinary separate legal entity would have. We therefore conclude that the Tri-County Regional Special Education Service does not meet this test under § 1222(6). Since we have so concluded, we need not reach the other criteria under that statute.

We hope this opinion addresses the questions which you raised in your memorandum. If you have any further questions, do not hesitate to contact this office.



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PAUL F. MACRI  
Assistant Attorney General

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