

FORMAL OPINION

April 9, 1965

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—NO. 1

Dear Mr. Kervick:

You have requested our advice as to whether the Municipal Court of North Hunterdon may report employees for Social Security purposes pursuant to the State's agreement with the Secretary of Health, Education and Welfare.

It is our opinion for the reasons stated herein that the Municipal Court of North Hunterdon may report employees for Social Security purposes.

The authority for the establishment of municipal courts in the State of New Jersey is contained in N.J.S. 2A:8-1 *et seq.* N.J.S. 2A:8-1 provides in part:

“Any . . . two or more municipalities entering into an intermunicipal agreement as hereinafter provided may, by . . . ordinances, establish a municipal court and determine upon the name thereof . . .”

N.J.S. 2A:8-3 enables two or more municipalities to enter into an agreement to establish a single intermunicipal court with jurisdiction coextensive with the territory of the municipalities party to the agreement. This legislation thereby made it financially possible for rural areas to avail themselves of the advantage of a well-run local court. 10 *Rutgers Law Review* 4, p. 647 (1956); Vanderbilt, Arthur J., *The Municipal Court—Most Important Court in New Jersey: Its Remarkable Progress and Its Unsolved Problems*. It is further noted that N.J.S. 2A:8-20 reaffirms that the territorial jurisdiction of a municipal court embraces all of the municipalities which joined in the formation of such a municipal court.

In the case of the Municipal Court of North Hunterdon, it serves and encompasses the Boroughs of Bloomsbury, Califon, Glen Gardner, Hampton and Lebanon, the Town of Clinton, and the Townships of Clinton, Franklin, Lebanon, Tewksbury and Union. The governing bodies of the various municipalities are required to provide the necessary accommodations and supplies for the court. N.J.S. 2A:8-18. The municipalities are also authorized to provide by ordinance or resolution for a clerk and other clerical assistance and to provide for their compensation. N.J.S. 2A:8-13. The magistrate of a municipal court is nominated and appointed by the Governor with the advice and consent of the Senate. N.J.S. 2A:8-5.

From the foregoing, it is abundantly clear that the Municipal Court of North Hunterdon is a creature of government, supported by government, is not operated for private profit, and is exclusively engaged in performing the essential governmental function of the administration of law at a local level.

The inquiry in this instance is whether such a court may report employees for Social Security purposes. To qualify under the Social Security Act, the municipal court has to fall within the ambit of “political subdivision” as defined therein. The Social Security Law (42 U.S.C.A. § 418 (b) (2) states that:

“Political subdivision includes an instrumentality of . . . (B) one or more political subdivisions of the State . . .”

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ATTORNEY GENERAL

Municipalities are recognized as subdivisions of the State. A pooling of their resources to create a municipal court through an intermunicipal agreement would provide the means by which the administration of justice would be carried out on a local level.

Although no definition of "instrumentality" is found under the Social Security Law, there is no reason why the common usage of such term would not be applicable. *Safeway Trails, Inc. v. Furman*, 41 N.J. 467, 478 (1964). Webster's New International Dictionary (2d Ed. 1943) p. 1288 defines an "instrument" as "(1) that by means of which any work is performed or result is effected; (2) a tool; utensil; implement." In *Unemployment Comp. Comm. v. Wachovia Bank & Trust Co.*, 215 N.C. 491, 2 S.E. 2d 592, 595-596 (Sup. Ct. 1939), the following factors were considered in determining whether an agency is an "instrumentality" of government: (1) whether it was created by government; (2) whether it is wholly owned by government; (3) whether it is not operated for profit; and (4) whether it is primarily engaged in performing some essential governmental function. See also *Mallory v. White*, 8 F. Supp. 989 (D.C. Mass. 1934) [where a city hospital maintained for poor persons was found to be an instrumentality of political subdivision of the state]. We have many examples in our own State of public bodies being considered governmental instrumentalities. *E.g.*, New Jersey Turnpike Authority, N.J.S.A. 27:23-1 *et seq.*; *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235 (1949); New Jersey Highway Authority, N.J.S.A. 27:12B-1 *et seq.*; *Behnke v. New Jersey Highway Authority*, 13 N.J. 14 (1953).

The foregoing authorities demonstrate that the Municipal Court of North Hunterdon would qualify as an instrumentality under the generally accepted criteria utilized in determining whether an agency is an instrumentality of government. It is a creature of government, created and wholly owned thereby; it is not operated for profit and is engaged solely in the performance of governmental function. There is nothing in federal law incompatible with this court being deemed an instrumentality. It is to be noted and emphasized that under the federal law the municipal court does not have to be a political subdivision in itself but may be an instrumentality of one or more political subdivisions.

Accordingly, you are hereby advised that the Municipal Court of North Hunterdon constitutes an instrumentality of one or more political subdivisions of the State of New Jersey and would therefor be included within the definition of political subdivision in the Social Security Law. Consequently, this court may report employees for Social Security purposes pursuant to the State's agreement with the Secretary of Health, Education and Welfare.

Very truly yours,
ARTHUR J. SILLS
Attorney General

BY: RICHARD NEWMAN
Deputy Attorney General