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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD



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FILE NO. S-1087

**CRIMINAL LAW:**  
**Letter Carrier or Postmaster**  
**Who Assumes Office of City**  
**Mayor Is Not Subject to**  
**Prosecution Under Section 4-8-7**  
**of Illinois Municipal Code**

Honorable Robert G. Gammage  
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Dear Mr. Gammage:

This responds to your letter concerning a possible violation of section 4-8-7 of the Illinois Municipal Code. (Ill. Rev. Stat. 1975, ch. 24, par. 2-8-7.) This section provides that no mayor or commissioner elected under article IV of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, pars. 4-1-1 et seq.) shall be an official of any public

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service corporation at the time he assumes office. Violation of this provision is a Class A Misdemeanor. Your specific inquiry is whether a city mayor who is a letter carrier or a postmaster of the United States Postal Service at the time he assumes the office of mayor is subject to prosecution under section 4-8-7 of the Code.

The General Assembly has not provided a statutory definition of "public service corporation" for purposes of section 4-8-7 of the Code. Consequently, the commonly accepted meaning of the term must be given to it. Anderson v. Bd. of Education, 390 Ill. 412.

Corporations are commonly divided into two categories: public corporations and private corporations. (18 Am. Jur. 2d Corporations, sec. 8, p. 553.) Within the class of private corporations, there is a sub-class known as quasi-public or public service corporations. (1 Fletcher Cyc. of Corporations, sec. 63, p. 314.) A quasi-public corporation is a private corporation which has accepted, along with its corporate charter, the grant of a franchise to devote its property and efforts to a use in which the public has an interest. (City of Danville v. Danville Water Co., 180 Ill. 235; People

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v. Suburban R.R. Co., 178 Ill. 594.) Even in the absence of a specific grant in its charter, where the property of a private corporation is devoted to a public use so as to become affected with the public interest, the corporation becomes quasi-public. (Stock Exchange v. Bd. of Trade, 127 Ill. 153.) Therefore, the essential nature of a quasi-public or public service corporation is that it is a private corporation which owes the duty to devote itself to providing public services, or which confines its operations to providing such services. (See 18 Am. Jur. 2d Corporations, sec. 9.) Railroads, common carriers, electric companies and telephone companies are common illustrations of this type of corporate enterprise. Therefore, it must be determined whether the United States Postal Service is a private corporation in order for it to be a public service corporation within section 4-8-7 of the Illinois Municipal Code.

Delivery of the mail is a function placed exclusively in the hands of Congress by the United States Constitution. (U.S. Const., art. I, sec. 8, cl. 7.) In pursuance of ful-

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filling this governmental function, Congress created the United States Postal Service as an independent establishment of the executive branch of the United States government. (39 U.S.C.A. sec. 201.) The United States Postal Service, therefore, is the delegee of the constitutional authority to perform this governmental function. (Lawhorn v. Lawhorn, 351 F. Supp. 1399.) The entire ownership interest in the United States Postal Service is derived from and is vested in the United States government. The capital financing of the postal service is composed of the equity of the United States government in the former Post Office Department, assets of the former Post Office Department, appropriations from Congress, revenues from postal services, and funds generated by obligations sold by the United States Postal Service. (39 U.S.C.A. secs. 2001, 2002, 2003, 2005.) There is no ownership vested in private individuals; nor is the United States Postal Service a creature of contractual agreement among private individuals.

A private corporation is a voluntary association formed by agreement among its members. Also, a corporation

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is private when the whole interest does not belong to the government, or the corporation is not created for the administration of political power. (Washingtonian Home v. Chicago, 157 Ill. 414.) Based upon these criteria, it is clear that the United States Postal Service is not a private corporation. It is created by statute (39 U.S.C.A. secs. 101 et seq.) and not by voluntary assent among private individuals. Finally, the whole interest of the United States Postal Service belongs to the United States government and its purpose is to fulfill the governmental function of delivering the mail. Since the United States Postal Service is not a private corporation, it cannot be a quasi-public or public service corporation for purposes of section 4-8-7 of the Illinois Municipal Code.

Since the United States Postal Service is not a public service corporation for purposes of section 4-8-7 of the Illinois Municipal Code, it makes no difference whether a letter carrier or postmaster is an official of the postal service.

For the foregoing reasons, it is my opinion that the United States Postal Service is not a public service

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corporation within section 4-8-7 of the Illinois Municipal Code. Consequently, an individual who is a letter carrier or postmaster of the United States Postal Service at the time he assumes the office of city mayor, is not subject to prosecution under section 4-8-7 of the Code.

Very truly yours,

A T T O R N E Y   G E N E R A L