

Speaker 1: “Is There Joint Custody in Your Joint Venture?” That is one of the first questions you should ask when determining how to provide Social Security coverage to a joint venture.

Speaker 2: During this presentation, we will be discussing the joint venture situations covered in SL 60001.670. A joint venture, as it has become known, is an organization created by the cooperative undertaking of the state and one or more political subdivisions or by two or more political subdivisions.

In reviewing the materials we gathered for this presentation, it became rather obvious that in order to determine the proper Social Security coverage of employee positions of a particular joint venture, one must first determine whether that joint venture is a separate “political subdivision” or “instrumentality”...

Speaker 1: Or whether the joint venture is an “integral part” of one or more of the political subdivisions that created it.

Thus, as part of our joint venture presentation we must first examine the aspects of the Social Security Administration’s definitions of “political subdivision,” “instrumentality,” and “integral part of” because they play a decisive role in determining the Social Security coverage of the employees of a joint venture.

Section 218 of the Social Security Act

Sec. 218 (a)(1): The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any **political subdivision** thereof.

42 U.S.C. § 418(a)(1)



2

Speaker 2: Any presentation on joint ventures must start with Section 218 of the Social Security Act because social security coverage under a 218 agreement can only be extended to employees of a state or its political subdivisions.

Coverage cannot be extended to any other type of organization.

Speaker 1: Nor can coverage be extended to a *portion* of a political subdivision. In other words, you cannot cover just one component or one office of a political subdivision. You generally must cover the whole political subdivision. For example, you can't just cover the employees of County Tax Department, or just the employees of the County Register of Deeds, but the entire County Government.

So if we see a proposed modification that attempts to cover just one component or office of a political subdivision, we would not approve that modification.

Speaker 2: By the same token, we would not approve a modification that attempted to cover the employees of an organization if that organization is not a separate and independent political subdivision in and of itself, but is instead an organization that results from a joint venture of two or more political subdivisions where the employees of that joint venture organization are employees of all of the participating political subdivisions.

Speaker 1: We first have to determine the legal status of the joint venture—whether the organization is separate and independent, or whether it is an integral part of one or more political subdivisions that created it.

Thus, determining the legal status of an organization is critical in determining coverage.

Chicago Metropolitan Regional Library (CMRL)



3

Speaker 1: Let's start with a hypothetical scenario, an examination of the Chicago Regional Library – the CMRL for short – a fictional regional library serving the citizens of five adjacent communities.



Speaker 1: The CMRL was created through an Interagency Agreement among five Illinois cities: Prairie Ridge, Mount Arlington, Garden Grove, Lake Vernon, and Chicago Park. The purpose of the CMRL is to provide residents of the five cities with a more efficient, broad-based system for the administration and distribution of library services.

How may the members of the CMRL be covered for social security?

Speaker 2: In order to answer this question, we need to first ask what is the Chicago Metropolitan Regional Library – that is, we need to determine its legal status.

Is the CMRL a political subdivision?

Speaker 1: Or, is it an instrumentality, which is considered to be a political subdivision for purposes of Section 218 coverage?

Speaker 2: Or, is this a situation in which one of the cities involved has been deemed to be the actual employer of the employees of CMRL?

Speaker 1: Or, is this a situation in which all of the cities involved are considered to be

joint employers?

We'll return to this example later, after we review the various possibilities.

Determining the Legal Status of an Organization



5

Speaker 2: As just mentioned, in order to determine how social security coverage may be extended to employees of the CMRL, we must determine the organization's legal status.

Just because the CMRL is a library, it does not necessarily mean that the CMRL is a political subdivision for purposes of social security coverage under Section 218 of the Social Security Act.

Indeed, not every joint venture you see will be a political subdivision.

Determining the Legal Status of an Organization

Political Subdivision

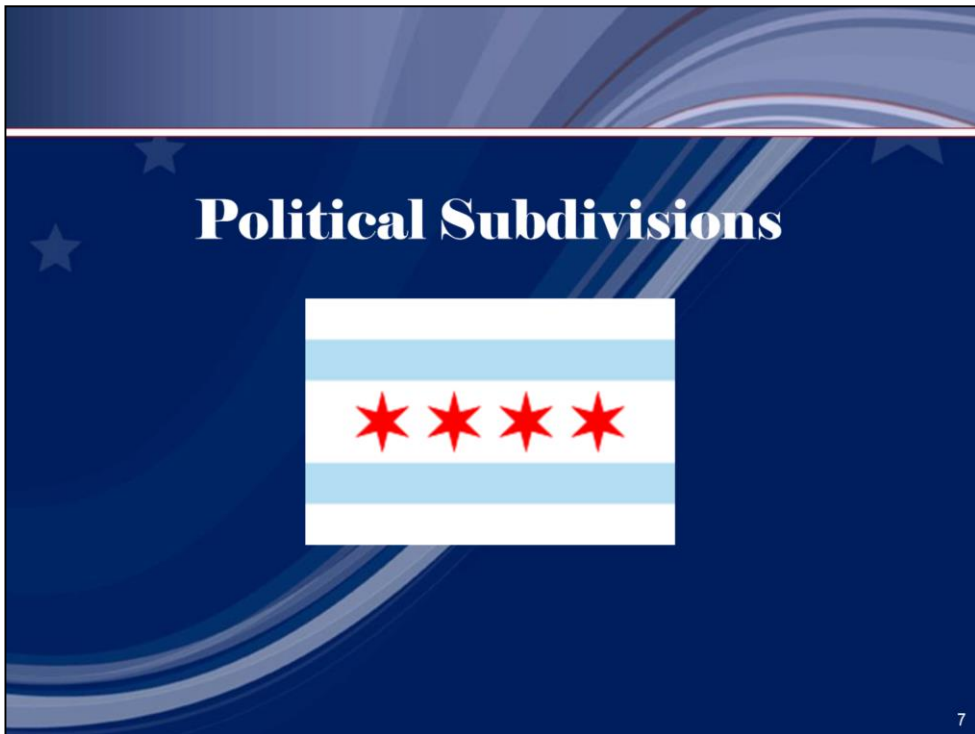
Instrumentality

Integral Part of

6

Speaker 1: We are going to spend some time covering: whether an entity is a

1. Political subdivision
2. A separate and independent instrumentality of a state or political subdivision; or
3. An integral part of a state or one or more political subdivisions



Speaker 2: Again, social security coverage under Section 218 of the Social Security Act may be extended only to employees of a State or any political subdivision of a State.

Let's start with political subdivisions.

Legal Definition of a Political Subdivision

“A separate legal entity of a State which usually has specific governmental functions.” **20 C.F.R. § 404.1202**

“A separate legal entity of a State that has governmental powers and functions.” **State and Local Handbook 30001.302**

“A political subdivision is a separate legal entity of a State that has governmental powers and functions...It is an independent legal entity....” **State and Local Handbook 30001.316(A)**

8

Speaker 1: The Social Security Administration defines political subdivision as a separate legal entity that has governmental powers and functions.

Examples of Political Subdivisions

- Counties
- Cities
- Townships
- Villages

20 C.F.R. 404.1202
State and Local Handbook SL 30001.316(A)

9

Speaker 1: These are a few examples of entities that are “ordinarily” going to be political subdivisions.

Breaking It Down

A political subdivision is a

separate

legal

entity that has governmental
powers and functions.

20 C.F.R. § 404.1202

10

Speaker 2: The two key words on which we need to focus are “separate” and “legal.”

The definition may seem a little redundant in that Merriam-Webster’s dictionary defines “entity” as an “independent, separate, or self-contained existence; (2) something that has a separate and distinct existence and objective or conceptual reality; (3) an organization (as a business or governmental unit) that has an identity separate from those of its members.”

Was the Organization Established:

- Under a State enabling statute?
- By city or county resolution?
- By vote of the electorate?
- By agreement between two or more political subdivisions?

11

Speaker 1: When evaluating whether a joint venture has the attributes of a political subdivision, determine whether express or implied statutory or other authority (i.e., state constitution) is necessary for the creation of the entity and whether such authorization exists.

What is the enabling law or document that created this entity?

Is the entity created by or pursuant to state statute?

Is it Separate from its Makers?

- Does State law describe the organization as separate and distinct?
- If created by agreement, does the agreement state that the organization is separate and independent of the political subdivisions that created it?
- Is there an Attorney General opinion discussing whether the entity is separate and independent?

12

Speaker 2:

State Law

Does the statute reflect that the entity is separate and distinct from the state or political subdivisions that created it?

Does the statute use words such as “corporate and body politic,” “separate and distinct from,” or “independent of.”

State law often identifies political subdivisions as bodies “corporate and politic.” (State and Local Handbook SL 30001.316(A))

What does that mean? Webster’s states:

Body Politic: a group of persons politically organized under a single governmental authority.

Corporation/Body Corporate: a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession.

Speaker 1: As you review the agreement establishing the joint venture, does the agreement among the political subdivisions that created the joint venture express an intent on the part of the political subdivisions that the joint venture be considered separate and independent from them?

Especially if state law is ambiguous on the nature of such joint ventures, is there a state AG opinion that addresses whether the organization is a separate and independent political subdivision?

Speaker 2: Keep in mind that SSA would not be bound by any of these factors. We look at the reality of the situation, and if that is inconsistent with what may be written in, for example, an AG’s opinion, we would not be bound by the AG’s opinion.

However, these types of factors may weigh heavily in favor of finding that an organization is a separate and independent political subdivision, especially where it is a close case.

Example of a Political Subdivision City of Chicago



65 ILCS 5/2-2-12:

Cities incorporated under this Code shall be bodies politic and corporate under the name of “City of (name),” and under that name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a corporate seal, changeable at pleasure, and exercise all the powers hereinafter conferred.

13

Speaker 2: Here we have an excerpt from the Illinois State Code defining those attributes a City under Illinois state law must possess. These are many of the same attributes you must consider when determining whether an entity meets the definition of “political subdivision”.

Let’s look at Chicago.

Is it Legal? –

Is it Separate? – Yes.

Additional attributes to consider especially with cities, towns, villages and counties is do they possess police powers and the power to levy and collect taxes.

Instrumentalities



14

Speaker 1: For purposes of Social Security coverage under Section 218 of the Act, the term political subdivision **includes** an instrumentality of a State, one or more political subdivisions of a State, or a State and one or more of its political subdivisions. 20 C.F.R. 404.1202.

Examples of instrumentalities include school districts, sanitation districts, reclamation districts, utility districts, drainage districts, flood control districts, or other similar districts.

Most joint ventures fall into the category of “Instrumentality”. How do instrumentalities differ from political subdivisions like Cities, Towns, and Counties.

What is an Instrumentality?

An Instrumentality is created to act in a legally independent capacity to accomplish a specific purpose or some function of government, but does not have the full powers of a government.

State and Local Handbook SL 30001.302, 30001.316(A);
IRS Pub. 963, at 2-4

15

Speaker 2: Like cities, towns, and counties, an instrumentality is also a separate and independent entity, but it carries out only a particular function. It generally does not have all of the powers of the type of political subdivision we just looked at—like a city or a county.

Where political subdivisions like Chicago have all the powers of government, an instrumentality exists to accomplish one specific purpose and does not have all the full powers of a government. For example, it may not have the power of eminent domain or police powers.

An instrumentality is a creation of the State or one or more political subdivisions, and yet, it is legally separate and distinct from the state or political subdivision(s) that created it. Many of the state Social Security Enabling acts use the term “juristic entity.”

For instance, **Florida’s** enabling act states: (Chapter 650: 650.02)

Speaker 1: The term "political subdivision" includes an instrumentality of the state, or of 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.

Speaker 2: **Texas’** Enabling Act provides: (Title 6, Subtitle A, Sec. 606.001)

Speaker 1: "Political subdivision" includes: (A) a county; (B) a municipality; or (C) an instrumentality of the state, of another political subdivision, or of the state and another political subdivision: (i) that is a *juristic entity* that is legally separate and distinct

from the state or political subdivision; and (ii) whose employees are not employees of the state or political subdivision.

Vermont's statutes provide that "Political subdivision' includes an instrumentality of a state, of one or more of its political subdivisions, or of a 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."

Speaker 2: While the Social Security Administration does not use the term "juristic entity," the use of this term reflects that the entity in question must be legally separate and distinct from the state or other political subdivisions that created it.

Factors to Consider

- ✓ Ability to hire/fire/supervise its employees;
- ✓ Ability to sue and be sued in its own name;
- ✓ Ability to contract;
- ✓ Ability to acquire, hold, and convey property;
- ✓ The degree of financial autonomy;
- ✓ The source of operating expenses;
- ✓ Whether it functions on behalf of one or more States or political subdivisions;
- ✓ Whether states or political subdivisions have powers and interests as owners

16

Speaker 1: Does the organization possess the characteristics expected of an independent legal entity?

These are the types of factors we consider. They are the same factors that we consider in determining whether an entity is a political subdivision, but when it comes to instrumentalities, it may be a closer case.

These factors come from the State and Local Handbook at SL 30001.318(A), which in turn looks to IRS Rulings 57-128 and 65-26.

While not all of these factors need to be present in order for an entity to qualify as an instrumentality, they should be present to a “substantial degree.”

An organization which is neither a body cooperate nor politic and which is devoid of any general powers of corporate existence is not a political subdivision.

Example of an Instrumentality: The Chicago Park District

70 ILCS 1505/3: . . . [T] he Chicago Park District shall constitute a body politic and corporate and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real property necessary for corporate purposes, and adopt a common seal and alter the same at pleasure.



17

Speaker 2: Now let's take a look at an example of an "instrumentality" -- The Chicago Park District.

Is it Legal? –

Is it Separate? -

Integral Part of



18

Speaker 1: So, if the organization is not legally separate and distinct from its creator, what is it? Well, perhaps the organization is part of the state or political subdivision that created it. Or in the case of a joint venture, part of one or more of the political subdivisions that created it.

The State and Local Handbook uses the term “Integral part of,” but you might also come across terms like “component unit of.”

Integral Part of

“Some entities may be integral parts of a political subdivision such as a city or county, instrumentalities of a State or political subdivision and therefore separate political subdivisions, or they may be private nonprofit organizations.”

State and Local Handbook SL 30001.316(A)

19

Speaker 2: For purposes of our training today, we are assuming that the organization is governmental. That is, there is no question as to whether the organization is privately owned. However, you should be aware that with some organizations and associations, there may be private interests involved such that the organization is under private ownership and control.

The State and Local Handbook 30001.316 addresses these situations as do IRS Revenue Rulings 57-128 and 65-26.

This though, is a subject better left for another day.

Integral Part of

- If the new entity is an integral part of an existing political subdivision, coverage is determined based on whether the political subdivision is covered under the 218 Agreement.
- BUT, SSA and IRS should be informed of the new component if it has its own payroll, bookkeeping, tax reporting system, EIN, etc.

State and Local Handbook SL 40001.477(A)

20

Speaker 1: An Integral Part of political subdivision is just that - part of the political subdivision that created it.

Therefore, if the political subdivision is not covered under the 218 Agreement, the new component cannot obtain coverage independently.

On the other hand, if the entity that created the new organization is already covered under the 218 agreement, there is no need for a new modification. This new component will be covered under the original modification.

However, if the new component has its own payroll, bookkeeping, tax reporting system, EIN, etc., then SSA and IRS will need to be informed that the new component is covered under the political subdivision's existing modification.

Don't Judge A Book By Its Cover

“Libraries and hospitals are illustrative of organizations whose status is often not apparent from either title or statute. They may be integral parts of a political subdivision such as a city or county, instrumentalities of a State or political subdivision and therefore separate political subdivisions, or they may be private nonprofit organizations.”

State and Local Handbook SL 30001.316(A)

Example of an Integral Part of: Heartland, Illinois General Hospital

Hospital funding is accounted for each year in Heartland's annual budget. The City Council approves all hospital expenditures over \$25,000.



The city holds title to the building and land. The city pays for the hospital insurance. The city council enters into all contracts on behalf of the hospital. Hospital employees are considered to be employees of Heartland.

22

Speaker 1: Let's take a look at an example of an entity that is an "integral part" of a political subdivision – The Heartland General Hospital.

The resolution reads:

Speaker 2: "Whereas the City of Heartland has a financial responsibility in providing for the better protection of public health, and whereas public hospitals are vital to serving that process, it is hereby declared that Heartland is authorized to establish a public hospital as an institution of public health for the citizens of Heartland. Such hospital shall **belong** to the **City of Heartland** which will **make all appropriations** necessary for the maintenance of said hospital and for the improvement and promotion of hospital resources and treatment. The **City of Heartland** shall **budget** for all hospital expenditures and **supervise** all hospital employees."

Speaker 1: Doesn't sound like a separate entity. Now, let's take a look at some additional facts that must be considered in our determination... (Read from the slide)

Is it Legal? –

Is it Separate? –

A modification to cover the employees of the City of Heartland as an absolute coverage group was effectuated on June, 17, 1955. So these employees are automatically covered, as well. **(Fred: Are hospital employees a group that can be optionally excluded? If so, then we can say that they are covered unless hospital employees were excluded from coverage under the original modification???)**

If the hospital has its own payroll and EIN, then the state should notify SSA and IRS.

Cooperative Undertakings (Joint Ventures)



23

Speaker 2: State and Local Handbook Section SL 60001.670 provides that “An individual may perform services for an organization in connection with an activity carried on cooperatively by the State and one or more political subdivisions or by two or more political subdivisions.”

The question then becomes what is the legal status of the organization resulting from that cooperative undertaking.

Speaker 1: The cooperative undertaking or “joint venture,” as it has become known, might result in a new, separate and independent instrumentality.

Speaker 2: Or, the resulting organization might be deemed to be a component unit of one of the creators.

Speaker 1: Or, we might have to conclude that all the creators are considered joint employers.

Speaker 2: Let’s turn our attention to the SL 60001.670 before returning to our Chicago Metropolitan Regional Library Example we discussed earlier in this presentation.

Cooperative Undertakings

An individual may perform services for an organization in connection with an activity carried on cooperatively by the State and one or more political subdivisions or by two or more political subdivisions.

State and Local Handbook SL 60001.670

24

Speaker 2: A cooperative undertaking, or joint venture as it has become known, is an organization carried on cooperatively by the State and one or more political subdivisions or by two or more political subdivisions.

Cooperative Undertakings Can Result in:

1. A new, independent Political Subdivision or Instrumentality;
2. A component of one the political subdivisions that is designated as the employer of the Cooperative Undertaking; or
3. A Joint Employer situation.

State and Local Handbook SL 60001.670

25

Speaker 1: There are three possible outcomes when we have a cooperative undertaking.

1. Joint Venture Results in New Instrumentality

If the organization is a separate political subdivision, the coverage of the employee is dependent upon whether the employees of the political subdivision are covered under a Section 218 Agreement or the mandatory Social Security and Medicare coverage provisions.

State and Local Handbook SL 60001.670

26

READ SLIDE

Speaker 2: If this is a new, independent instrumentality (or political subdivision), then that organization can be covered under a modification in its own right. And coverage will be completely independent of whether the organizations that created it were covered under the 218 agreement.

Was the Organization Established:

- Under a State enabling statute?
- By city or county resolution?
- By vote of the electorate?
- By agreement between two or more political subdivisions?

27

Speaker 1: So what factors do we consider when we determine whether a cooperative undertaking results in a new, independent political subdivision or instrumentality? The same factors that we used to evaluate any other political subdivision or instrumentality:

What is the enabling law or document that created this organization? Does it say whether the entity is separate and independent? A body corporate and politic? Often this is a critical factor.

Speaker 2: We have some states that make very clear that certain cooperative undertakings are to be considered separate and independent of the political subdivisions that create or establish them.

But other states are not as clear.

Speaker 1: Sometimes we see agreements that clearly state that the new entity is separate and independent of the entities that created it, while some are more ambiguous.

The more difficult cases are where state law is ambiguous, and the document that created the organization does not clearly state an intent that the organization be separate and independent of the political subdivisions that established it.



Speaker 1: Now back to the Chicago Metropolitan Regional Library. Let's say the **state statute** in this case provides that two (2) or more adjacent cities may on their own initiative join in establishing and maintaining a library. The management and control of a library shall be vested in a board of trustees. The board of trustees shall constitute a corporate body with perpetual succession.

Speaker 2: The agreement among the cities in this case states: The board shall adopt such bylaws and policies for their own guidance and for the government of the library; have the supervision, care and custody of all property of the library including its quarters or buildings; employ a library director and upon that person's recommendation employ such other staff as may be necessary; adopt personnel policies which shall include dismissal of employees; allot funds for the purchase of library materials and supplies for the library; and do all other acts necessary for the orderly and efficient management and control of the library.

Speaker 1: In this case, the state statute authorizes the creation of this entity and recognizes its existence. The state statute recognizes the entity as being separate and distinct from its makers with the use of the words corporate body.

Further, the agreement among the parties reflects that the library possesses the powers characteristic of an independent legal entity.

Thus, we can conclude that this library is an instrumentality and we can cover the Chicago Metropolitan Regional Library with a Modification.

Considerations in Determining Whether an Entity Is an Independent Instrumentality:

- ✓ Ability to hire/fire/supervise its employees;
- ✓ Ability to sue and be sued in its own name;
- ✓ Ability to contract;
- ✓ Ability to acquire, hold, and convey property;
- ✓ The degree of financial autonomy;
- ✓ The source of operating expenses;
- ✓ Whether it functions on behalf of one or more States or political subdivisions;
- ✓ Whether states or political subdivisions have powers and interests as owners

29

Speaker 2: So what do we consider when the law and documents do not clearly state that the entity is separate and independent? The same types of factors we look at when we evaluate any political subdivision or instrumentality. They are...(read slide).

2. One Political Subdivision Is Designated as the Employer

If the organization is not a separate political subdivision, it must be determined whether one political subdivision is the designated employer of the individuals performing services, i.e., whether one entity actually hires, fires, and controls the performance of services.

State and Local Handbook SL 60001.670

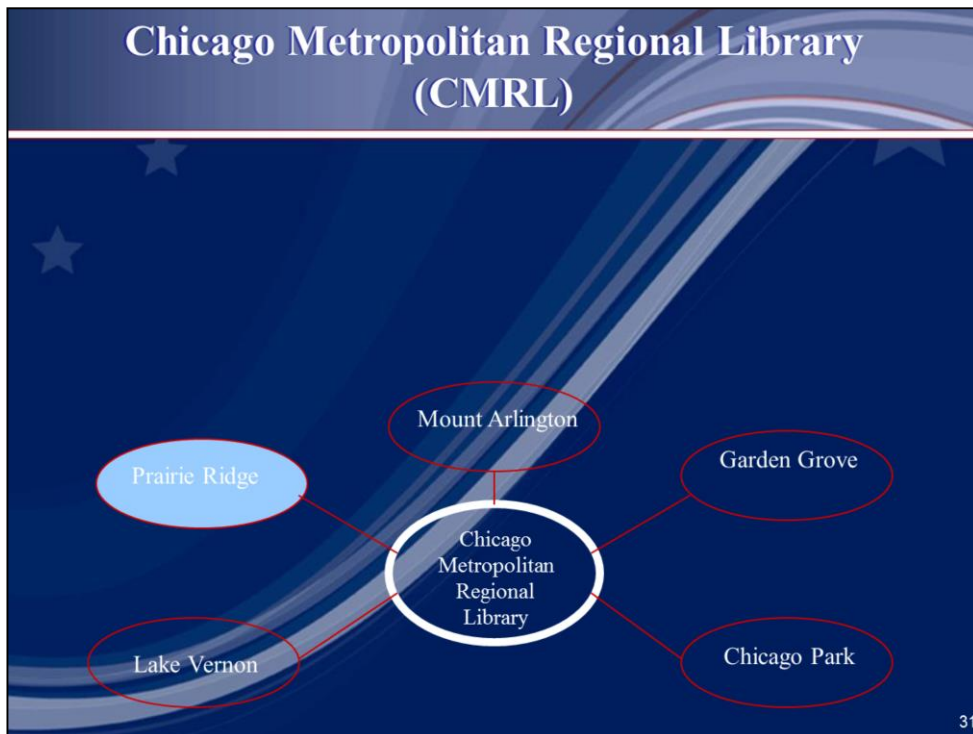
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Speaker 2: However, what if both the state statute and the agreement between the cities fail to establish that the library is a separate and legal entity? Then we must determine whether one of the political subdivisions creating the joint venture is the employer or whether all the political subdivisions that created the joint venture are the employers.

Speaker 1: The second bullet of 60001.670 describes a joint venture situation in which one of the political subdivision has been deemed to be the actual employer.

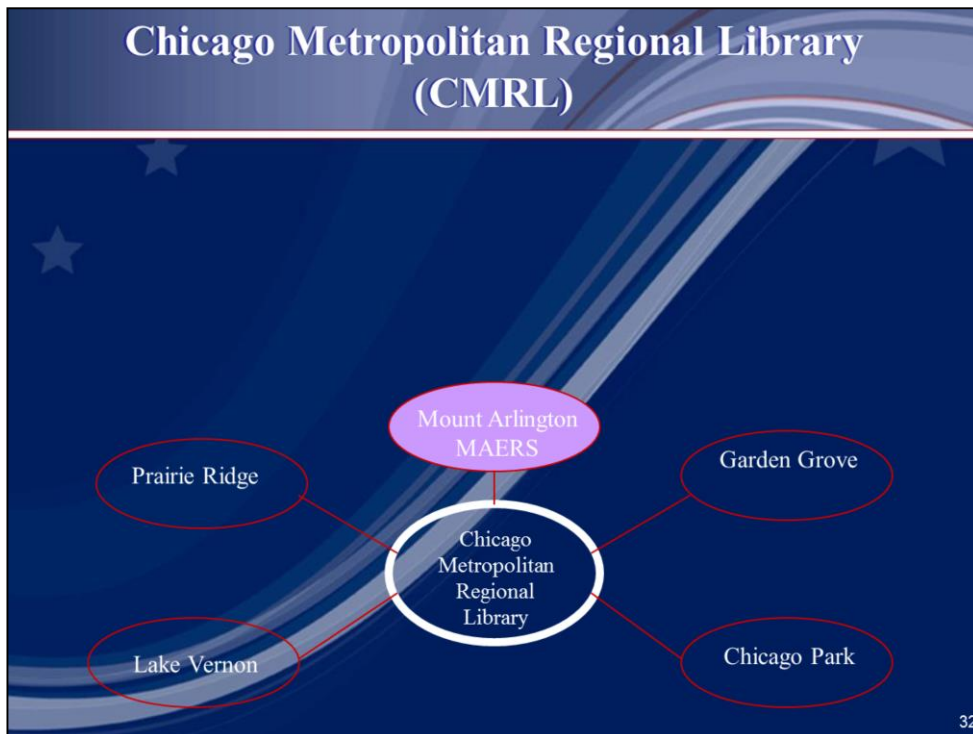
In this situation, one of the political subdivisions actually hires, fires, and controls the performance of services.

Speaker 2: If one political subdivision is the employer, the coverage of the employees is dependent upon whether the employees of that political subdivision are covered under a Section 218 Agreement or the mandatory Social Security and Medicare coverage provisions.



Speaker 1: So let's change the facts concerning the Chicago Metropolitan Regional Library. Let's say that a review of the CMRL situation indicates that CMLR is not a separate political subdivision and that the Agreement provides that the City of Prairie Ridge is the sole employer of the CMRL employees with the power to hire, fire, and control the performance of their services.

The coverage of the CMLR employees is then dependent upon the Social Security coverage situation of The City of Prairie Ridge. Guess what? It just so happens that the City of Prairie Ridge is covered under the Illinois Section 218 Agreement; thus, the employees of the CMLR will also be covered for Social Security under the City of Prairie Ridge's Section 218 coverage modification.



Speaker 2: But what happens if the review of the CMRL situation indicates that the sole employer of the CMRL employees is not the City of Prairie Ridge, but one of the other five cities...say Mount Arlington? The coverage of the CMLR employees is then dependent upon the Social Security coverage situation of The City of Mount Arlington.

Unlike Prairie Ridge, Mount Arlington does not have Social Security coverage for its employees. Instead, Mount Arlington's employees are covered under the Mount Arlington Employees Retirement System ("MAERS"). Thus, the CMLR employees are not covered for voluntary Social Security, and because the Mount Arlington Employees Retirement System is a qualifying retirement system, they are also excluded from mandatory Social Security Coverage.

3. Joint Venture Results in a Joint Employer Situation

If the organization is not a separate political subdivision, it may be an entity created by a joint venture of two or more political subdivisions in which none of those political subdivisions has been designated as the employer. Generally, in such situations, all the participating political subdivisions are considered joint employers.

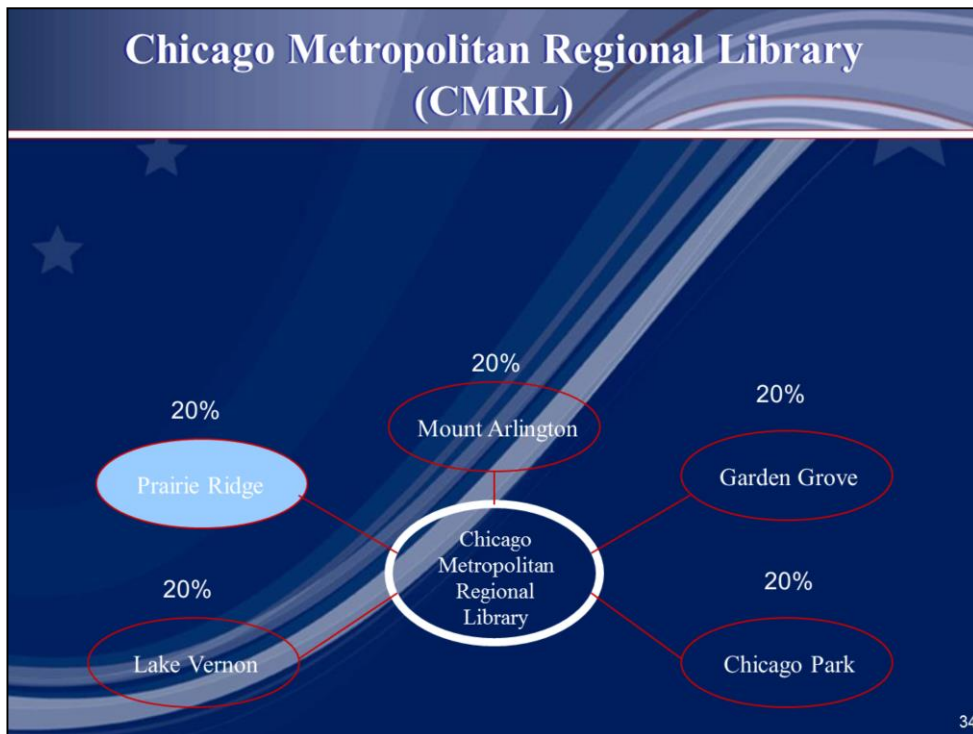
State and Local Handbook SL 60001.670

33

Speaker 1: If the entity is **NOT** independent, and if we don't have one political subdivision designated as the employer, then **all** of the participating political subdivisions are considered joint employers. In this situation, the coverage of services performed by an employee under the State's Section 218 Agreement is dependent upon the extent to which each of the joint employers has provided coverage for its employees under the state's Section 218 Agreement.

In the joint employer scenario, each employer which has covered its positions under a Section 218 Agreement is liable for reporting its pro rata share of the employee's wages. Each employer must report up to the taxable maximum.

So let's change the facts about the Chicago Metropolitan Regional Library to fit a joint employer situation.



Speaker 2: State law says: Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform.

There is insufficient indicia that this is an independent entity (in the statute, in the agreement, and in the powers given to the library), and none of the political subdivisions is designated as the employer.

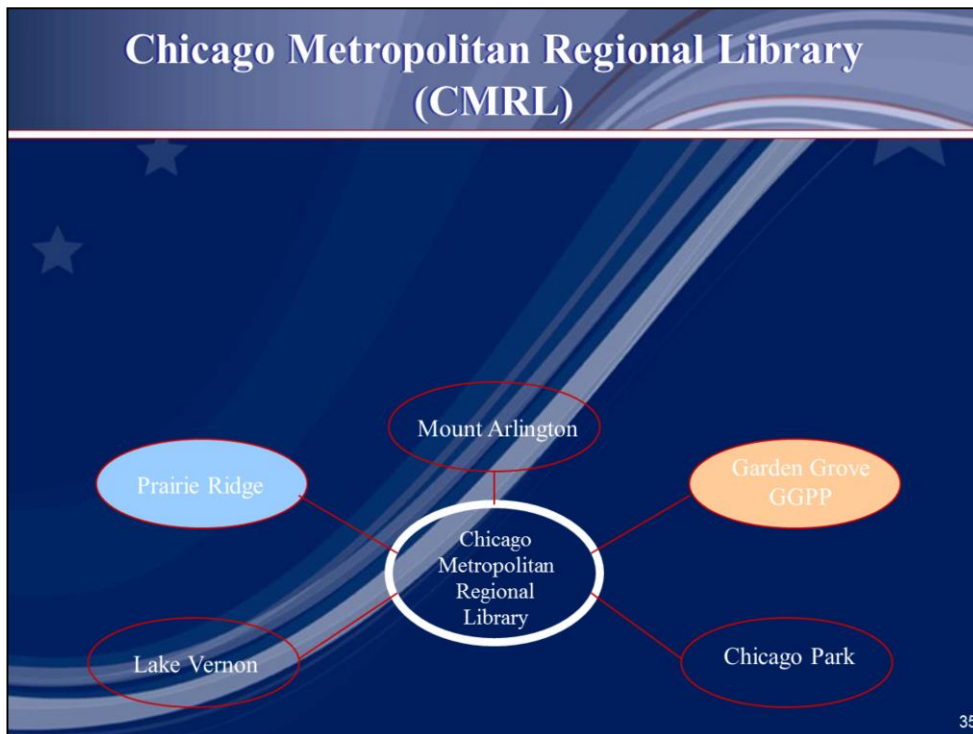
The agreement between these cities provides that each city is to provide 20% of the library funding as determined in the annual budget.

Social Security coverage under this scenario is dependent on the extent to which each city has extended coverage to their employees under a 218 Agreement.

Speaker 1: The only city to extend social security coverage to its employees under a modification is **Prairie Ridge**. The other cities do not pay into social security, but rather cover their employees under a retirement system.

Thus, under this scenario, an employee for Chicago Metropolitan Regional Library would only have 20% of his salary taxed for social security.

Thus, if a CMRL employee is making \$40,000 a year, only \$8,000 of that salary would be taxed for Social Security since only Prairie Ridge has covered its employees under a modification. Again, each employer which has covered its positions under a modification is liable for reporting its pro rata share of the employee's wages.



Speaker 2: Let's take a look at another possibility; some, but not all of the joint employers are covered for Social Security. This is similar to the last scenario except that the City of Prairie Ridge is not the only employer covered under a Section 218 Agreement. Employee positions in the City of Garden Grove are covered by the Garden Grove Pension Fund (the GGPF). Social Security coverage has been extended to Garden Grove's employees following a favorable coverage referendum.

Speaker 1: In this joint employer scenario, 40% of the salary (or \$16,000 of the CMRL employee's \$40,000 salary) would be taxed for Social Security since both Prairie Ridge and Garden Grove's employees are covered under the State's Section 218 Agreement.

What Evidence Does SSA Require?

- A reference to the statutory authority which established the organization's status.
- A copy of any legal authority under which the new government entity was established (e.g., cooperative agreement)

State and Local Handbook SL 40001.420(D), 40001.477

36

Speaker 2: To assist SSA in making coverage determinations, the state should submit to the Agency as much information about the organization as possible.

The State should make an initial inquiry into who is the actual employer.

The State should provide a copy of the enabling document that created the organization. This could include a copy of a city or county ordinance or a copy of the order of an authorized official which effectuated the establishment of the organization. Where legislative authority is involved, either a reference to it or a copy of the legislation should be provided along with proof that this authority has been exercised.

Speaker 1: If the organization is the result of an agreement between the State and one or more political subdivisions or between two or more political subdivisions, the State should provide a copy of that agreement and any documents that expand on the agreement or discuss it.

What Should the State Do?

- Send the modification and supporting documentation to the RO for review.
- If the modification is complex or there is a question concerning the legality of any provision of the modification, the State may request a preliminary review of the modification from the RO.

State and Local Handbook SL 40001.420(B)

SSA Makes Final Coverage Determinations

- Final determinations regarding State Section 218 Agreements are governed by Federal law and are made by SSA.
- Where State law may have a bearing on the issue, an opinion of the State legal officer may be requested if one does not already exist. The opinion will be given due weight in making the final determination.

State and Local Handbook SL 20001.210



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