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Office of The Attorney General  
**State of Connecticut**  
June 7, 2013

LeAnn R. Power, CRM  
Public Records Administrator  
Connecticut State Library  
231 Capitol Avenue  
Hartford, CT 06106

Dear Ms. Power:

You have requested a formal opinion as to whether the Connecticut Municipal Electric Energy Cooperative (CMEEC) is subject to the municipal records management program under Conn. Gen. Stat. § 11-8. CMEEC is a municipal electric energy cooperative created pursuant to Conn. Gen. Stat. § 7-233a *et seq.* Because we conclude that a municipal electric energy cooperative constitutes a political subdivision of the state within the meaning of Conn. Gen. Stat. § 11-8, CMEEC comes within the scope of the records management program authorized by that statute.

**Background**

This issue was addressed in informal advice from this Office to Eunice DiBella, the Public Records Administrator in 1994. The informal advice concluded that “[b]ecause such cooperatives are created by municipal special service districts – which are themselves subject to the authority of the public records administrator – to carry out essential governmental functions and hold governmental powers, the records of such cooperatives are public records which fall under the authority of the public records administrator.” Mem. to Eunice DeBella dated Apr. 25, 1994, at 2. We understand that in recent discussions you have had with CMEEC, CMEEC questions the validity of this conclusion reached in the informal advice.

State statutes direct that the State Librarian, with the assistance of the Public Records Administrator, *see* Conn. Gen. Stat. § 11-8(b), develop and direct a records management program, including record retention schedules, for state agencies and political subdivisions of the state. Specifically, § 11-8 of the General Statutes provides:

Under the direction of the State Library Board, the State Librarian shall be responsible for developing and directing a records management program for the books, records, papers and documents of all state agencies within the executive department, and the books, records, papers and documents of the several towns, cities, boroughs, districts and *other political subdivisions of the state*, pursuant to section 11-8a.

Conn. Gen. Stat. § 11-8(a) (emphasis added). Section 11-8a in turn provides:

The State Librarian may require each such state agency, or *each political subdivision of the state*, to inventory all books, records, papers and documents under its jurisdiction and to submit to the State Librarian for approval retention schedules for all such books, records, papers and documents. . . .

Conn. Gen. Stat. § 11-8a(b) (emphasis added). The phrase “other political subdivisions of the state” is not statutorily defined.<sup>1</sup>

CMEEC is a municipal electric energy cooperative (municipal cooperative) established pursuant to Chapter 101a of the General Statutes. A municipal cooperative is “a separate legal entity created by concurrent resolutions of two or more municipal electric utilities . . . in connection with the acquisition, construction, reconstruction, operation, repair, extension or improvement of electric power generation or transmission facilities. . . .” Conn. Gen. Stat. § 7-233b(7). A municipal cooperative is created by the concurrent resolutions adopted by the governing bodies of two or more municipal electric utilities.<sup>2</sup> Conn. Gen. Stat. § 7-233c(a). Each of the municipalities represented by a municipal electric utility joining a municipal cooperative must consent to the formation of the municipal cooperative. *Id.* The municipal cooperative’s board consists of representatives of the municipal electric utilities, and each such

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<sup>1</sup> The legislative history of § 11-8 offers no guidance as to the meaning of political subdivisions as used therein.

<sup>2</sup> A municipal electric utility is defined as “an electric department, agency or other body of a municipality which provides for the production, supply and/or distribution of electric energy to the inhabitants or any portion thereof as well as others, which department, agency or other body has been established in accordance with applicable provisions of law.” Conn. Gen. Stat. § 7-233b(8).

representative must be an official or employee of the municipal electric utilities. *Id.* Municipal cooperatives “shall constitute a public body corporate and politic, and in furtherance of its purpose of providing facilities for the generation and transmission of electric power such [municipal cooperative] shall be deemed to be ***exercising an essential governmental function***. . . .” Conn. Gen. Stat. § 7-233e(b) (emphasis added). Municipal cooperatives are granted a wide range of powers, including the power of eminent domain. Conn. Gen. Stat. § 7-233e(b)(15). Because their purposes “are public purposes and a municipal cooperative will be performing an essential governmental function,” the legislature has exempted municipal cooperatives from taxation by the state or any political subdivision of the state. Conn. Gen. Stat. § 7-233s. The statutes governing municipal cooperatives do not, however, expressly declare them to be political subdivisions of the state.<sup>3</sup>

### Analysis

Undefined references to political subdivisions are found throughout the General Statutes, and both the courts and this Office have had occasion to address whether various entities constituted political subdivisions for the purposes of particular statutes. For example, in determining that a local taxing district is a political subdivision for the purposes of the minority representation statute, the Supreme Court in *State ex rel. Maisano v. Mitchell*, 155 Conn. 256, 263 (1967), stated that

[t]he term ‘political subdivision’ is broad and comprehensive and denotes any division of the State made by proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public.

*Id.* at 263; see Black’s Law Dictionary 1053 (5th ed. 1979) (quoting *Maisano*).

Shortly following *Maisano*, the Court in *Dugas v. Beauregard*, 155 Conn. 573 (1967), held that city and town consolidation districts were not political

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<sup>3</sup> The legislative history of Chapter 101a does not provide any further guidance as to whether the legislature intended to treat municipal cooperatives as political subdivisions.

subdivisions for purposes of laws governing consolidation of local government units. The *Dugas* Court stated:

The attributes which are generally regarded as distinctive of a political subdivision are that it exists for the purpose of discharging some function of local government, that it has a prescribed area, and that it possesses authority for subordinate self-government through officers selected by it.

*Id.* at 578. The city and town consolidation districts were merely geographical subdivisions for the purpose of apportioning taxes and electing members to the city council. Thus, they did not have the “essential attributes” of a political subdivision. *Id.* at 578-79.

More recently, in *Mayfield v. Goshen Volunteer Fire Co.*, 301 Conn. 739 (2011), the Supreme Court elaborated on the general meaning of political subdivision as it is typically used throughout the statutes. In *Mayfield*, the Court concluded that a town volunteer fire company was not a political subdivision for purposes of state Occupational Safety and Health Act, principally because the fire company was organized as a nonstock corporation and as such was not a unit of local government. *Id.* at 747-48. In so holding, the Court noted that statutory references to political subdivisions generally “establish a core set of entities – cities, towns, and **other units of local government** – that plainly fall within the meaning of political subdivisions.” *Id.* at 747 (emphasis added). Moreover, it emphasized that when the legislature wanted a more expansive scope of political subdivision for a particular purpose, it had on occasion done so in specific statutory language. *Id.* at 748-49 (citing as examples Conn. Gen. Stat. §§ 19a-710(9), 7-462(b)).<sup>4</sup>

The approach taken in these cases is consistent with that followed in several formal opinions of this Office. For example, this Office opined that the South Central Regional Council of Governments was a political subdivision for purposes of applying for “Brownfield” grants under a program funded by the federal Environmental Protection Agency. A.G. Opinion No. 2000-13 (Mar. 24, 2000). Applying *Maisano*’s definition of political subdivision, the opinion noted

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<sup>4</sup> The *Mayfield* Court also rejected the use of a “functional equivalent” test imported from the Freedom of Information Act for assessing whether an entity was a political subdivision. 301 Conn. at 754-55.

that “[t]he authority to establish such regional councils of government derives from a duly enacted statute, and the councils themselves are in fact established by the actions of the component municipal bodies.” *Id.* at 1. It further concluded that the planning functions of such councils constituted governmental functions within the *Maisano*’s description of political subdivisions. *Id.*

Similarly, this Office has opined that regional councils of government, regional planning agencies, and transit districts all were political subdivisions for purposes of set-aside programs for small contractors and minority business enterprises under Conn. Gen. Stat. § 4a-60g. A.G. Opinion No. 2008-08 (Apr. 30, 2008). The opinion concluded that each of these entities were political subdivisions because they were “statutorily created by local governments through appropriate municipal actions,” they were “autonomously self-governed,” and their functions and duties were “inherently public.” *Id.* at 5.

By contrast, this Office concluded that tourism districts created under former Conn. Gen. Stat. § 32-302 were not political subdivisions for purposes of exemption from sales tax under Conn. Gen. Stat. § 12-412. A.G. Opinion No. 1996-08 (May 28, 1996). The opinion concluded that tourism districts were geographic subdivisions only. Although the tourism districts “[a]rguably . . . carry out some governmental function” in promoting tourism, they had no authority for “subordinate self-government.” *Id.* at 2.

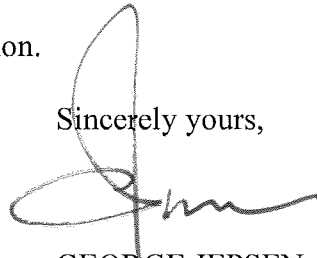
Applying the principles from these cases and opinions, we conclude that a municipal cooperative such as CMEEC is a political subdivision of the state for the purposes of § 11-8. First, the authority to establish a municipal cooperative is statutory and requires the concurrent resolution of the participating municipal electric utilities as well as the consent and agreement of each municipality represented by the municipal electric utilities. Conn. Gen. Stat. § 7-233c(a). The managing body of the municipal cooperative is comprised of representatives of the municipal electric utilities, who are officials or employees of the municipal electric utilities. *Id.* Moreover, the legislature expressly provided that municipal cooperatives “shall be deemed to be exercising an essential governmental function. . . .” Conn. Gen. Stat. § 7-233e. Because municipal cooperatives have “public purposes” and perform “an essential governmental function,” the legislature exempted them from taxation by the state and other political subdivisions. Conn. Gen. Stat. § 7-233s.

Given these attributes – a statutorily authorized entity created by municipal entities and governed by a body comprised of municipal representatives to carry out an essential governmental function – municipal cooperatives are akin to those entities that have been deemed to be political subdivisions and readily distinguishable from those that have not. Although the Court in *Mayfield* cautioned against construing the meaning of political subdivision beyond the traditional understanding of “cities, towns and other units of local government” in the absence of a more expansive statutory definition, this does not preclude a determination that an entity, such as a municipal cooperative, is a “unit of local government.” *Mayfield*, 301 Conn. at 747-48. Plainly, municipal cooperatives are not mere geographical subdivisions of the state. They are quite different in form and governance than a nonstock corporation, such as a volunteer fire company, which *Mayfield* concluded was not a political subdivision. Instead, like regional councils of government, regional planning agencies, and transit districts that this Office has determined to be political subdivisions, municipal cooperatives are created through statutorily authorized municipal action. They perform a quintessential public purpose and governmental function typical of local units of government.

We therefore conclude that municipal cooperatives are political subdivisions for purposes of § 11-8. We note, however, that this conclusion means only that under that statute the State Librarian is responsible for developing a records management program for such entities,. Section § 11-8a affords the State Librarian significant discretion to tailor the program and retention schedule to the particular entity. We express no opinion about whether and to what extent your agency should account for the differences between municipal cooperatives and other public agencies, including municipal special service districts, when crafting the particular retention schedule for a cooperative.

We trust this is responsive to your question.

Sincerely yours,

A handwritten signature in black ink, appearing to read "G. Jepsen", written over a horizontal line.

GEORGE JEPSEN  
ATTORNEY GENERAL