

August 9, 2006

Hansford Hatmaker
Councilmember
City of LaFollette
207 South Tennessee Avenue
LaFollette, Tennessee 37766

Dear Councilmember Hatmaker:

It has come to my attention that you requested an opinion on whether or not an individual working in the library is an employee of the city. Here are the facts related to me:

- She has been on the city's payroll since November 1989
- She has always received the same pay increases that other city employees have received
- She is enrolled in the city's health insurance program
- She earns vacation and sick leave and all other benefits awarded to city employees
- She works hours that are set by the library board and not those of city hall
- She did not go through the traditional hiring procedure established in city policies
- After the last city election, when city officers (department heads) were appointed according to the city's charter Article VI, Section 1, this individual was included in the list of appointees.
- The operating expenses of the library are included in the city's budget

Based on these facts, it is my opinion that the individual is an employee under the Internal Revenue Service (IRS) code. The distinction between an employee and a contract laborer according to the IRS is made by deciding three key issues:

1. behavioral control – workers are considered employees if the organization gives instructions on when and where to do the work, what tools or equipment to use, what workers to hire or to assist with the work, where to purchase supplies and services, what work must be performed by a specified individual, what order or sequence to follow; and if the worker is trained to perform services in a particular manner.
2. financial control – workers are considered employees if the organization reimburses them for business expenses; if they do not have a significant investment in the facilities they use; if they are paid a regular wage amount for an hourly, weekly, or other period of time; if the workers do not make their services available to the relevant market; and if they cannot realize a profit or loss based on the service provided.
3. the relationship of the parties – workers are considered employees if the organization does not have written contracts describing the relationship the parties

intended to create; if the organization provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay; if the workers are considered permanent rather than temporary; and if the worker provides a key aspect of your regular business activity (for which you will have the right to direct and control their activities).

Under common-law rules, anyone who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. While the library board sets the hours that the library is open, it does not seem to me that the library board directs any of the employees' other actions or is otherwise involved in employment practices.

Please feel free to contact me if you have any questions or if I may be of other assistance. Thank you for allowing MTAS to be of service to the City of LaFollette.

Sincerely,

Margaret Norris
Municipal Management Consultant

C: Mayor Cliff Jennings
Councilmember Bob Fannon
Councilmember Shirley Fox Rogers
Councilmember Ken Snodderly
City Administrator David Young