

SOCIAL SECURITY: Deputies and assistants to recorder of deeds,
DEPUTY RECORDERS: third class township organization counties, who
COUNTY EMPLOYEES, WHEN: are appointed and paid compensation under pro-
visions of Sec. 59.250, Laws of Mo. 1953, p. 372,
are "county employees" within meaning of Old Age and Survivors Insurance
Law, Ch. 105, RSMo Cum. Supp. 1955, and Federal Social Security Laws, if
county has sufficiently complied therewith to have employees covered.
In such event, counties are liable for employers' portion of tax re-
quired by Sec. 3111, Subchapter (b), Federal Insurance Contributions Act.



May 24, 1956

Honorable James E. Woodfill
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Mr. Woodfill:

This department is in receipt of your recent request for our
official opinion, which reads, in part, as follows:

"With regard to the second question, I wish
to determine who should pay the employer's
contribution to the F.I.C.A. tax on a
deputy's salary in the Office of the Recorder
of Deeds. I have read several opinions which
have held that assistants to certain county
officers are deemed to be employees of such
officers and not employees of the county, and
that such officers should pay the employer's
contribution to the F.I.C.A. tax, but I have
been unable to find an opinion regarding the
Recorder of Deeds.

"If the Recorder's Deputy is an employee of
the Recorder, is the County Court authorized
to reimburse the Recorder for amounts con-
tributed by him to the F.I.C.A. tax on his
deputy's salary?"

Vernon is a county of the third class and is operating under
township organization. In said county, the offices of circuit
clerk and recorder of deeds are separated, and we note that your
inquiry involves the recorder of deeds and his deputies. Sections
59.250 and 59.365, Laws of Missouri, 1953, pp. 372 and 373, relate
to the duties and compensation of the recorder of deeds in third
class township organization counties where there is a separate
circuit clerk and recorder. Section 59.250 reads as follows:

"1. The recorder of deeds in counties of
the third class, wherein there is a separate

circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received. He shall make a report thereof each year to the county court.

* * * * *

The inquiry is whether or not the deputy of the recorder is an employee of the recorder. If he is an employee of that officer and the recorder pays the employer's contribution or F.I.C.A. tax as required under provisions of the Old Age and Survivors Insurance provisions of the Federal Social Security Act, is the county court authorized to reimburse the recorder for such payments made by him?

At the outset, we desire to point out that in the event all employees of a county are to receive the benefits of Old Age and Survivors Insurance under the Federal Social Security Act, the county court must comply with the provisions of Section 105.350, RSMo, Cum. Supp. 1955, by submitting a plan for approval to the state. The submission of such plan is discretionary with the county court, and the county employees are not entitled to the benefits under said law until the county elects to comply with same so that all county employees may be covered. Such was the conclusion reached by this department in an official opinion rendered to Honorable Rufe Scott, Prosecuting Attorney of Stone County on February 23, 1955. A copy of said opinion is enclosed for your consideration.

For the purpose of our discussion herein, it will be assumed that the Vernon County Court has submitted a plan for state approval as required by said Section 105.350, RSMo, Cum. Supp. 1955, which has been approved, and that county employees, including those whose compensation is paid in the form of fees, are covered under applicable provisions of the Social Security Law. In passing, we note from Section 59.250, supra, that the compensation of the recorder and that of his deputies or assistants is paid solely from fees received by the recorder.

In this connection we wish to make it clear that the present opinion is not passing upon the liability for contributions imposed upon the compensation of deputies of the recorder, other than that paid to them from fees of the recorder.

In the instant case, we note that the recorder of deeds, his deputies and assistants, under provisions of Section 59.250, supra, receive compensation from fees collected and such compensation is received in a certain mode or manner. This statutory manner is

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exclusive and they are entitled to no other or different compensation or method of receiving same than that specifically authorized by the statute.

Under said statutory provisions, the recorder is required to keep a full, true and faithful account of fees of every kind received, and to make a report of same each year to the county court. From all such fees received by him, he is authorized to retain the sum of \$4,750 as his compensation for each year of his official term. An amount sufficient to pay the compensation of necessary deputies and assistants shall also be paid out of fees received by the recorder. After paying the compensation of the recorder and that of his assistants, he shall pay over the remainder to the county treasurer. He shall be entitled to credit on his yearly report to the county court for such amounts necessary to pay his assistants, and it was so held in the case of State ex rel. Vernon County v. King et al., 136 Mo. 309, and the court said at l.c. 319 and 320:

"We are of the opinion, therefore, that the allowance to the recorder of reasonable compensation for necessary hire of assistants was not a matter of mere discretion with the county court. In his settlement, the recorder was entitled to a credit for the amount so paid; and, if such credit had been given, there would be, at most, but a small amount, if anything, due the county."

The recorder of deeds and assistants are paid compensation from fees collected by the recorder and fees over \$4,750 per year belong to the county and not to the recorder. Therefore, said deputies and assistants would be employees of the county instead of employees of the recorder, within the meaning of the Old Age and Survivors Insurance Law, and also of the Federal Social Security Law. This same principle was held to be the law in our legal opinion rendered to Honorable Philip A. Grimes, Prosecuting Attorney of Boone County on October 26, 1951, a copy of which is enclosed for your consideration. However, it will be noted that in this opinion the ruling is that contributions are to be made by the county only in those instances where county funds are involved.

In said opinion it was concluded that the deputy assessor and deputy collector of a third class county were "county employees" within the meaning of the Federal Social Security Law, and that the county was liable for the employer's contribution under said law.

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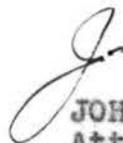
In view of the foregoing, it is our thought that deputies and other assistants of the recorder are "county employees" within the meaning of the Old Age and Survivors Insurance provisions of Chapter 105, RSMo, Cum. Supp. 1955, and that the county is liable for the employer's portion of the tax for said employees, as required by Section 3111, Subchapter (b) of the Federal Insurance Contributions Act.

CONCLUSION

It is, therefore, the opinion of this department that deputies and assistants of the recorder of deeds of a third class township organization county, who were appointed and receive compensation under authority of Section 59.250, Laws of Missouri, 1953, are "county employees" within the meaning of the Old Age and Survivors Insurance Law, Chapter 105, RSMo, Cum. Supp. 1955, and of the Federal Social Security Law, if the county has sufficiently complied with the applicable state and federal statutes to have its employees covered insofar as Social Security benefits to said employees are concerned. In that event, the county is liable for payments of the employer's portion of the tax as required by provisions of Section 3111, Subchapter (b) of the Federal Insurance Contributions Act.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Very truly yours,



JOHN M. DALTON
Attorney General

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