

SOCIAL SECURITY:  
SCHOOLS:  
COUNTY SUPERINTENDENT  
OF SCHOOLS:

The clerical assistant to the county superintendent of public schools is an employee of the county and social security deductions and matching payments shall be made by the county when the county participates in social security under Senate Bill No. 3.  
October 25, 1951

Honorable John E. Downs  
Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri



Dear Sir:

We have on hand your request for an official opinion of this department which reads as follows:

"Section 167.190 Revised Statutes of Missouri, 1949 provides that the State shall pay \$750 for a Clerical Assistant to the County Superintendent of Public Schools. The same section provides for a maximum salary of \$1500 per year. The Clerical Assistant to our County Superintendent of Schools receives the sum of \$1500 per year.

"Our County Court has elected to come under the Social Security Plan effective January 1, 1951. The question arises as to whether the State contributes the one and a half percent for the \$750 contributed by the State for the Clerical Assistant hereinabove mentioned.

"I have been informed that the County has received a check from the State in the amount of \$750, indicating of course that no deductions were made by the State for Social Security.

"Would you please advise this office as to whether or not we should make a full deduction from the wages of this particular employee, or whether or not the State and the County withholds and contributes in proportion to the amounts paid respectively by the County and State."

Honorable John E. Downs

The State of Missouri has authorized the coverage of officers and employees of the state, its subdivisions, and instrumentalities under the Old Age and Survivors insurance system of the Federal Social Security Act, 42 U.S.C.A., Section 1400, et seq., Buchanan County has become a participant in the system for its officers and employees.

You have asked whether or not the county should make full deduction from the wages of the clerical assistant to the County Superintendent of Schools, under the provisions of Senate Committee Substitute for Senate Bill No. 3, hereafter referred to as Senate Bill No. 3.

Section 167.190, RSMo 1949, is quoted in parts referring to this clerical assistant as follows:

"\* \* \* The county superintendent of public schools shall be permitted to employ clerical assistance, to whom there shall be paid not less than seven hundred and fifty dollars nor more than one thousand five hundred dollars annually to be determined and fixed by the county court, seven hundred and fifty dollars of which shall be paid by the state out of state school moneys, the same to be included by the state board of education as a part of the apportionment made before August thirty-first of each year. \* \* \* The county treasurer shall upon presentation of a proper bill by such clerical employee, or employees, such bill having been approved by the county superintendent and audited by the county court, draw a warrant each month for payment of same out of moneys provided by the state for such purpose, \* \* \* provided further, that all warrants in payment for clerical hire shall be drawn in favor of the person or persons who render such services and in no case shall the county superintendent personally receive any part thereof."

There has been no deductions by the state out of the \$750 sent to Buchanan County for payment of the clerical assistant to the Superintendent of Schools of Buchanan County.

Honorable John E. Downs

In Section 167.190, quoted above, we desire to restate a portion thereof for emphasis: "The county treasurer shall ... draw a warrant each month for the payment of same out of moneys provided by the state for such purpose." Although the State of Missouri provides \$750 per annum for the purpose of this clerk hire by the statute, by the terms of the statute the state does not pay the salary to the clerk. The same may be characterized as a grant to the county from the state for a specified purpose. The same is paid by the county treasurer out of money provided by the state. It is not the entire salary although by the maximum limit of \$1500 in the statute, it is one-half of it.

This seems to be distinctly a county function and the clerical assistant seems to be a county employee. In the recent case of Shamburger v. Commonwealth et al. 240 S.W. (2d) 636, the Court of Appeals of Kentucky, deciding the case under Kentucky's state participation in the Federal Old Age and Survivors insurance act, said at l.c. 637:

"The fundamental point, it seems to us is the fact that contributions (or excise taxes) required by the law to be paid by both employers and employees, is a percentage of wages or compensation paid and received. 26 U.S.C.A. secs. 1400, 1410. Therefore, so far as liability for payment is concerned, the controlling point is the source of the compensation, i.e., who pays the salaries."

Senate Bill No. 3, Section 6, subsection 5, is as follows:

"The state comptroller at the end of each quarter shall certify to the state treasurer the amount of the state's share of the contributions required to be paid to the federal agency on account of the officers and employees of each department, division, agency or unit of state government whose services are covered by an agreement entered into under section 2. Thereupon the state treasurer shall immediately transfer such amounts from the proper funds from which the officers and employees were paid to the credit of the contribution fund."

Honorable John E. Downs

We believe from this that the Legislature did not intend for the comptroller to cause the extraction (from every payment made) of contributions from the salaries to be paid out of every payment of state money. This certainly refers to state officers and employees and the clerical assistant is, in our opinion, distinctly a county employee.

CONCLUSION

Therefore, it is the opinion of this department that a clerical assistant to the county superintendent of schools is an employee of the county and if such position is otherwise eligible to social security under Senate Bill No. 3, full deductions should be made from the wages paid to such employee. The state should not withhold social security payments from the money paid for such clerical hire.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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