

SOCIAL SECURITY:
STATE AGENCY:

The state agency has no authority under Senate Bill No. 3 to exclude from coverage services of an emergency nature.

July 5, 1951

7-6-51



Honorable Elmer L. Pigg
State Comptroller and Director
of the Budget
Department of Revenue
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your recent request for an opinion from this department which request reads as follows:

"Senate Committee Substitute for Senate Bill No. 3 designates the Division of Budget and Comptroller as the State Agency to administer the Act.

"Do I have the authority under this Act to exclude services of emergency nature, as permitted by Federal law? If so, do I have the authority to determine what service is of an emergency nature?"

Your question requires an interpretation of Senate Committee Substitute for Senate Bill No. 3 as recently passed by the 66th General Assembly and approved May 31, 1951.

Prior to the 1950 amendments of the Federal Social Security Act, state and local government employees were exempt from coverage under the old-age and survivors insurance provisions of the act. The 1950 amendments makes possible for the first time the coverage of state and local government employees. This coverage is not compulsory but is placed upon a voluntary basis. Specifically

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enabling legislation is necessary on behalf of the state to cover state and local employees. Senate Bill No. 3 authorized this coverage. It is noted particularly that Senate Bill No. 3 only allows state and local government employees to come under the provisions of the Federal Social Security Act. Therefore any interpretation of Senate Bill No. 3 must of necessity include reference to the Federal Act.

Section 218(c), as amended, of the Federal Social Security Act provides in part as follows:

"(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

"(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group."

Paragraph (2) of Subsection (c) of Section 218, as amended, provides that all services in each coverage group shall be included in the agreement entered into between the state and the Federal Security Administrator, with the exceptions noted.

Paragraph (3) of Section 218(c), as amended, provides as follows:

"Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any services of an emergency nature or all services in any class or classes of elective positions, part-time positions, or positions the compensation for which is on a fee basis."

From the above quoted paragraph it is quite obvious that the state could have excluded within any coverage group any services of an emergency nature. We believe that if such services were to be excluded, to fully comply with said provision, they should have been expressly set forth. Looking now to Senate Committee Substitute for Senate Bill No. 3, we find no express exclusions. In fact, we are led to the opposite conclusion, i.e., that all services of

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whatever nature were intended to be covered by the provisions of this act.

Paragraph 3 of Section 2 provides:

"All services which constitute employment as defined in section 1 and are performed in the employ of the state by employees of the state shall be covered by the agreement."

(Underscoring ours.)

Paragraph 4 provides:

"All services shall be covered by the agreement which:

- (1) Constitute employment as defined in section 1;
- (2) Are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision;* * *."

This section provides that all services shall be covered which constitute employment as defined in Section 1. The term employment as defined in Section 1, Subsection 3 is as follows:

"'Employment', any service performed by any employee of the state or any of its political subdivisions or any instrumentality of either of them, which may be covered, under applicable federal law, in the agreement between the state and the federal security administrator, except services, which in the absence of an agreement entered into under this act would constitute 'employment' as defined in section 210 of the Social Security Act."

(Underscoring ours.)

Since this definition includes any service which may be covered under applicable law in the agreement between the state and the Federal Social Security Act, and since services of an emergency nature could be included, we are of the opinion that the state agency has no authority to exclude services of an emergency nature.

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Having concluded that the state agency has no such authority under Senate Bill No. 3, there is no need to pass upon your second question.

CONCLUSION

Therefore, it is the opinion of this department, that since services of an emergency nature could be covered in an agreement entered into between the state and the Federal Social Security Act, and since we can find no express exclusion of such service under the terms of Senate Bill No. 3, which could have been done under applicable law, the state agency does not have the authority to exclude from coverage services of an emergency nature. Further, we are of the opinion that such service must be included in the agreement entered into with the Federal Security Administrator.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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