

SOCIAL SECURITY:  
UNIVERSITY EMPLOYEES:

Employees of State Universities are employees of the State and the State Comptroller as state agency under SCSSB No. 3, is authorized to accept social security contributions from funds held by State Universities under provisions of Section 33.080, RSMo 1949, for university employees paid from those funds.

September 11, 1951

9-11-51

Honorable Elmer L. Figg  
Comptroller and Budget Director  
Department of Revenue  
State of Missouri  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your recent opinion request which reads as follows:

"The University of Missouri and Lincoln University receive grants from the federal government, which can and are used for the payment of salaries and expenses of the Universities. Other receipts come from students, which are used in like manner. The University of Missouri does not deposit any of these receipts in the State Treasury to be appropriated. Lincoln University and the state colleges deposit only a part of student fees in the State Treasury to be appropriated (R. S. Mo. 33.080). The money which these institutions retain remain under their control and disbursed by them for salaries and expenses. The only funds under control of State are appropriations made to these institutions. In order for these institutions to match the contributions of employees who are paid from the funds retained by these institutions is to pay into the Contribution Fund (Sec. 6, page 9, S. C. S. for S. B. No. 3) an equal amount from funds under their control. Payment is made to the 'State Treasurer of Missouri, Custodian of the Contributions Funds.' Disbursement is to be made from the Contributions Fund to the federal agency and for certain refunds and adjustments.

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"Do I have the legal authority to accept and deposit in the Contributions Fund the amounts withheld from employees and payment of the state's part, to match employees contributions, from funds under control of these institutions, and disburse them as provided in Sec. 6, page 9, S. C. S. for S. B. No. 3? I respectfully request your official opinion on this question."

The funds referred to in your letter which accrue to the Universities and are not deposited in the State Treasury and appropriated by the General Assembly to the Universities are held by the institutions under authority conferred by Section 33.080, RSMo 1949, which reads as follows:

"All fees, funds and moneys from whatsoever source received by any department board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the general assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. The unexpended balance remaining in all such funds (except such unexpended balance as may remain in any fund authorized, collected and expended by virtue of the provisions of the constitution of this state), shall at the end of the biennium and after all warrants on same have been discharged and the appropriation thereof has lapsed, be transferred and placed to the credit of the ordinary revenue fund of the state by the state treasurer. Any official or other person who shall willfully fail to comply with any of the provisions of this section, and any person who shall willfully violate any provision thereof, shall be deemed guilty of a misdemeanor; provided that in the case of state educational institutions there is excepted herefrom, gifts or trust funds from whatever source; Appropriations, gifts or grants from the federal government, private organizations and individuals;

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funds for or from student activities, farm or housing activities, and other funds from which the whole or some part thereof may be liable to be repaid to the person contributing the same, and hospital fees; all of which excepted funds shall be reported in detail quarterly to the governor and biennially to the general assembly."

The institutions employ persons who are paid from funds retained by the institutions under the authorization of this section. Your question then is whether the custodian of the "Contributions Fund" has authority to accept and deposit in the contributions fund the amount withheld from employees' wages paid from these funds and whether you may accept payment of the employer's contribution (matching employees' contribution) from the funds under control of these institutions.

The state operates only through its agencies which are created by the constitution and state statutes. The Universities referred to are agencies of the state charged with the obligation of performing certain functions.

S.C.S. for S.B. No. 3, Section 1, paragraph (2), defines "employee" as follows:

"(2) 'Employee', elective or appointive officers and employees of the state, including members of the general assembly, and elective or appointive officers and employees of any political subdivision of the state, or any instrumentality of either the state or such political subdivision; provided, that employees who are members as of July 1, 1951, of any retirement system supported wholly or in part by the state or any of its instrumentalities or political subdivisions may not be included in an agreement.;"

Paragraph (3) defines employment as follows:

"(3) '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,

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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;"

Section 2, paragraph 1, of said Act provides as follows:

"The state agency, with the approval of the governor, shall enter into on behalf of the state an agreement with the Federal Security Administrator, consistent with this act, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or of any of its political subdivisions, or of any instrumentality of any one or more of them, with respect to services specified in such agreement, which constitute employment as defined in section 1 of this act. Such agreement may contain provisions relating to coverage, benefits, contributions, effective date, modifications and termination of the agreement, administration and other appropriate provisions, and except as otherwise required by the Social Security Act as to the services to be covered, such agreement shall provide that benefits will be granted to employees whose services are covered by the agreement, their dependents and survivors, on the same basis as though the services constituted employment within the meaning of Title 2 of the Social Security Act."

And paragraph 3 of the same section reads as follows:

"3. 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."

Following the passage of this Act, the following resolution was adopted by the University Board which reads in part as follows:

"Commencing on the first day of the month following the date of the approval of the plan and agreement of this Board by the State

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Agency, there shall be paid out of any one or more of the various funds which are and may be under direct supervision and control of this Board and which are not appropriated by the General Assembly of the State of Missouri, the sum or sums of money necessary to pay the contributions of this Board, as employer, which shall be due and payable by virtue of the extension of the benefits of the Federal Old-Age and Survivors Insurance System to those eligible employees and officials of this Board whose wages are paid, in whole or in part, from monies not appropriated by the General Assembly of the State of Missouri, said sum or sums of money to be paid into the Contributions Fund, created by Senate Committee Substitute for Senate Bill No. 3 of the 66th General Assembly of the State of Missouri; provided, however, that in making the first payment to said Contributions Fund after the benefits of said system have been extended to such employees and officials, said first payment shall include a sum equal to the amount which would have been due and payable had said extension of benefits been provided and effective on January 1, 1951. The fund or funds from which said payments are to be made will at all times be sufficient to pay the contributions of this Board by this paragraph of this resolution directed to be paid to said Contributions Fund by virtue of the extension of said benefits to the eligible employees and officials of this Board in this paragraph referred to;"

A plan or agreement was then adopted which reads in part as follows:

"(3) The Board, upon approval of this plan and agreement by the State Agency, will pay into the Contributions Fund, created by the State Act, at such time or times as the State Agency shall prescribe, contributions with respect to wages in the amounts and at the rates specified in the agreement entered into between the State of Missouri and the Federal Security Administrator, such amounts, except as in this paragraph otherwise provided, to be

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equal to the sum of the taxes which would be imposed by Sections 1400 and 1410 of the Federal Insurance Contribution Act if the services covered by said agreement and by this plan and agreement constituted employment within the meaning of said Act, it being understood, however, that the portion of said contributions which is to be paid by the Board on its behalf, as employer, shall be paid only with respect to those of its eligible employees and officials whose wages are paid, in whole or in part from monies not appropriated by the General Assembly of the State of Missouri; provided, however, that in making the first payment to said Contributions Fund after the approval of this plan and agreement by the State Agency, said first payment shall include a sum equal to the amount which would have been due and payable had this plan and agreement, the agreement between the State of Missouri and the Federal Security Administrator, and the State Act, all been effective on January 1, 1951. If the Board fails to make any of the payments herein provided to be made at the time or times when due, each and every such delinquent payment shall bear interest at the rate of six (6) per cent per annum from the due date until paid, and the State Agency may recover any such amount or amounts as may be delinquent, in the manner provided in the State Act."

It is the opinion of this department that those persons who are employed by the Universities of this state should be regarded as employees of an agency of the state under Senate Committee Substitute for Senate Bill No. 3. Under the provisions of Section 33.080, RSMo 1949, supra, and the authority vested in the regents of our State Universities, it is the opinion of this department that they have authority to make such a contract with the state agency under Senate Committee Substitute for Senate Bill No. 3. Further, that pursuant to the resolution cited above or by virtue of the agreement entered into between the university and the custodian of the contribution fund, such custodian is authorized to accept a deposit into the contribution fund the amount withheld from employees' wages and the matching contribution to be paid by the employer.

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CONCLUSION

It is the opinion of this department that employees of the State Universities who are paid wages from funds held and disbursed by the Universities under authorization of Section 33.080, RSMo 1949, are employees of the State, and for the purpose of administering Senate Committee Substitute for Senate Bill No. 3, the custodian of the contributions fund created therein is authorized to accept and deposit in the contributions fund the amounts withheld from employees and contributions of the employer, and disburse said funds as provided in Section 6, Senate Committee Substitute for Senate Bill No. 3.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

*J.E.T.*  
APPROVED:

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J. E. TAYLOR  
Attorney General

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