

**SOCIAL SECURITY:  
OFFICIAL COURT  
REPORTERS:**

A circuit court reporter is an employee of each of the counties comprising his circuit and in the event the county has accepted the social security law ~~that~~ *it* shall pay social security deductions upon the amount it pays the reporter.

October 10, 1951

Honorable Elmer L. Pigg  
State Comptroller &  
Director of the Budget  
State of Missouri  
Jefferson City, Missouri



Dear Mr. Pigg:

Reference is made to your recent request for an official opinion, which reads as follows:

"I am receiving inquiries from counties and court reporters in the judicial circuits in Missouri about Social Security coverage for reporters.

"As you perhaps know, a reporter serving a circuit is paid by each county upon a statement from the circuit judge as to that county's share. This payment is based upon the population of that particular county.

"My question is: 'Should the County which has elected to extend coverage to its employees withhold from the reporter's salary and report him along with other county officials and employees, even though all of the counties in the circuit may not have elected to extend Social Security to its employees and officials?'"

In a recent opinion rendered by this department, August 28, 1951, to Honorable H. K. Stumberg, Prosecuting Attorney of St. Charles County, it was stated that for the purpose of the social security law, an official court reporter of a judicial circuit comprised of three counties, is an employee of each county to the extent that such county contributes to his compensation. In that opinion to Mr. Stumberg, it was not stated whether or not the amount withheld would be different in the event one of the several counties had not

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adopted the provisions of the Federal Old Age and Survivors Benefit Act, since all three of the counties of the court reporter's circuit had accepted the provisions of Senate Bill No. 3. We believe that it sufficiently showed that the employer-employee relationship existed for the purposes of Senate Bill No. 3.

In the matter of Shamburger v. Commonwealth et al. 240 S.W. 2d 636, it has been ruled by the Kentucky Court of Appeals as follows, 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."

(Emphasis, ours.)

For the purpose of determining the "employer" under the Federal Old Age and Survivors Insurance Act, it is certainly of vital importance that consideration be given to the person or legal entity paying the salaries or wages from which the employee's contribution must be extracted, and to determine the person or entity required to make the payment of the so-called employer's share.

In regard to this matter, we are compelled to call attention to another recent decision in a somewhat similar legal situation. In the matter of Magruder v. Yellow Cab Co. of D. C., Inc., the employer-employee relationship was considered and in that case, at 141 Fed. 2d 324, the court said, l.c. 325:

"It is crystal clear that two essential conditions precedent must concur in order that a valid tax may be here levied; (1) There must exist a relationship of employer and employee; (2) wages must be paid by the employer to the employee. \* \* \*"

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The above quoted case concerns an interpretation of the same revenue act as for the Federal Old Age and Survivors Insurance provisions of Title 2 of the Social Security Act which is 26 U.S.C.A., Secs. 1400, 1410.

You have asked in your request, "should the county which has elected to extend coverage to its employees, withhold from the reporter's salary and report him along with other county officials and other employees, even though all of the counties in the circuit may not have elected to extend social security to its employees and officials?"

Our answer, based upon the reasoning of the above two decisions, and the provisions of the Act, must be that a county which has elected to come within the provisions provided by Senate Committee Substitute for Senate Bill No. 3 by passing the required regulation and entering into the proper agreement, must provide for deductions from the salary of all of its employees and make matching contributions to the contribution fund as set out in the Senate Bill.

Of course, a county which has not accepted the act need not either withhold or make a contribution and by the same token we do not believe that a county should pay contributions toward the salary of a court reporter on an amount either greater or less than the amount the county pays toward his salary.

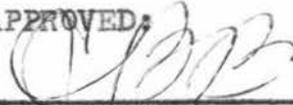
#### CONCLUSION

It is, therefore, the opinion of this department that for the purpose of coverage under the Social Security Act, a county which has accepted the provisions of Senate Committee Substitute for Senate Bill No. 3 must include the amount of compensation which it pays to the court reporter of the circuit court for the county, along with its other officers and employees even though all of the counties in the circuit for which the reporter acts have not elected to accept the provisions of the Senate Bill.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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