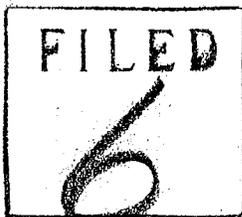


PROSECUTING ATTORNEYS: Social Security payments.



August 30, 1955

Honorable William F. Bellamy, Jr.
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Bellamy:

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

"On December 18, 1954, I requested an opinion from your office as to whether or not the secretary to the prosecuting attorney and also to the county treasurer in a third class county should be paid directly by the county court or whether they should be paid by the county officer involved from his own personal funds and then reimbursement made to him by the county court from county funds, if the county court felt that the employment of a secretary was necessary to the proper function of the office.

"In response to my request for an opinion I received your letter of December 27, 1954, stating that an individual employed by the prosecutor of a third class county for secretarial services does not become a county employee and that the county could reimburse the prosecutor for necessary outlays for stenographic services but that payment should be made to the official and not to the employee. * * * I believe in my original letter I also asked the question, although I do not believe the opinion fully covered it, as to whether or not the prosecuting attorney would also be entitled to reimbursement from the county court for the employer's share of the Social Security

Honorable William T. Bellamy, Jr.

paid for the secretary. In other words, in this county the prosecuting attorney is reimbursed by the county court for a full-time secretary in the actual amount of the salary paid to her by the prosecuting attorney. From this amount the prosecuting attorney withholds the employee's share of the Social Security but is forced to pay from his own pocket the employer's half of the Social Security.

"My question is whether or not the prosecuting attorney is entitled to reimbursement for the employer's half of the Social Security in addition to the salary already agreed upon by the county court."

As stated in your request, this office did issue to you an opinion under date of December 27, 1954, holding that "in the event proper budget requirements have been met such county may reimburse the prosecuting attorney for necessitous outlays for such stenographic services." The opinion further held that such person hired to perform stenographic services is an employee of the prosecuting attorney and not an employee of the county. In view of this fact, and in view of the existing Federal law relating to Social Security contributions, the prosecuting attorney, as an employer, would be required to file Social Security reports and remit both employer and employee contributions. The employer's contributions required to be paid by the employer are, under such facts, directly related to the services performed by such employee, and in view of the fact that the work is such that the prosecuting attorney may be reimbursed therefor, we are of the opinion also that he may be reimbursed for the employer's contributions actually paid, such constituting a necessitous outlay.

CONCLUSION

Therefore, it is the opinion of this office that a prosecuting attorney of a county of the third class may, in the event proper budget requirements have been met, be reimbursed for employer's Social Security contributions actually paid in connection with outlays for stenographic services.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General