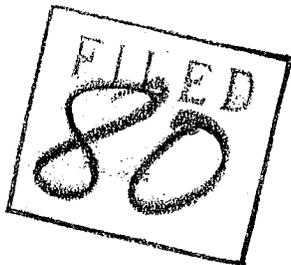


SOCIAL SECURITY: County court has discretion under Section
COUNTY COURT: 105.350, Vernon's Annotated Missouri Statutes,
to submit a plan for approval by the state
agency under said act.



February 23, 1955

Honorable Rufe Scott
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads in part:

"In Stone County, a political subdivision of the State of Missouri, 4th class, is it possible for the county employees to receive the benefits from The Federal Social Security Act where all of the employees favor participation except the County Court who refuse to enter into contract with The State Social Security Agency?"

Section 105.350, Vernon's Annotated Missouri Statutes, subsection 1, provides that each political subdivision of the state may submit for approval by the state agency a plan for extending the benefits of Title 2 of the Social Security Act (42 U.S.C.A., Section 401, et seq.) to its employees and are further authorized to, by proper resolution, enter into an agreement upon its approval by the state. Said section reads in part:

"1. Each political subdivision of the state and each instrumentality of the state or of a political subdivision may submit for approval by the state agency a plan for extending the benefits of Title 2 of the Social Security Act (42 U.S.C.A. Sec. 401 et seq.), to its employees, and are hereby authorized to, by proper ordinance or resolution, enter into and ratify any such agreement upon its approval as aforesaid.

* * *

Honorable Rufe Scott

There can be no question as to the authority of any county to enter into any agreement with the state for extending such benefits to county employees. This department has heretofore rendered an opinion to this effect. Furthermore, Section 105.350, supra, clearly provides for such action.

Section 7, Article VI, Constitution of Missouri 1945, provides for the election of a county court and further provides that the county court shall manage all county business as provided by law. It is well established in this state that county courts are merely agents of the county and shall manage the county business as prescribed by law. In re City of Kinloch, 242 S.W.2d 59, 362 Mo. 434. It has further been held that outside of the management of fiscal affairs of the county, that the county courts possess no powers except those conferred by statute, Floyd v. Philpot, 266 S.W.2d 704.

Under Section 105.350, supra, it will be noted that the legislature in enacting said statute provided that any political subdivision of the state may submit a plan for approval by the state agency. The courts have held that generally in statutes the word "may" is permissive only and the word "shall" is mandatory. State ex inf. v. Wymore, 119 S.W.2d 941, 343 Mo. 98, 119 A.L.R. 710.

In view of the fact that county courts are charged by law with the responsibility of the management of county affairs and business of the county court, and that the statutes permitting the county employees to participate in such benefits provide that the county court may submit a plan for the approval of the state agency, which clearly indicates that it is within the discretion of the county court, and not mandatory, that such plan be submitted for approval, we are inclined to believe that the mere fact that all the county employees desire that such a plan be submitted for the approval of the state agency under the act is of itself not sufficient to force the county court to submit such a plan.

CONCLUSION

It is therefore the opinion of this department that in order for the employees of Stone County, Missouri to participate in any benefits under the Old Age and Survivor's Insurance Provision of the Federal Social Security Act, the County Court of Stone County,

Honorable Rufe Scott

Missouri must comply with the provisions of Section 105.350, supra, by submitting a plan for approval by the state. This is a matter entirely within the sole discretion of the county court, and the fact that all county employees desire the county court to submit such a plan is of itself insufficient to force the county court to act.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARR:vlw/vtl