

ASSESSORS: In the case of part time deputy county assessors, a  
DEPUTY ASSESSORS: portion of whose salary is paid out of the county  
treasury and a portion by the assessor personally,  
are county employees and that the county is liable  
for social security contributions to the extent of  
the amount of salary which it pays to them; the county is not liable  
for contributions for unemployment compensation for deputy assessors;  
and part time deputy assessors would not, to the extent that their  
salaries are paid by the county, automatically come within the pro-  
visions of the Workmen's Compensation Act.



August 27, 1957

Honorable W. H. S. O'Brien  
Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I have been asked by Mr. Oscar 'Bud' Kasten, Assessor of Jefferson County to request an opinion from your office concerning the following inquiries:

1. Various individuals are hired on a part time basis for the purpose of taking personal property tax assessment listings; and for this they are paid a fixed amount per list, are not paid a set salary and are employed on part time basis. Query: should these individuals be construed as employees of the County or employees of the assessor personally, for the purpose of federal social security payment?
2. Would the fact that four or more of these individuals are employed as above described cause either the assessor or the County Court to be liable for contribution for unemployment compensation?
3. If such an individual as above described were to be involved in an automobile collision causing personal injury to another person or causing personal injury resulting in death to another person, would the so-called 'deputy assessor' be protected by the immunity that is inherent to the sovereign state? Further query: Would the assessor be liable under the doctrine of 'respondeat superior'?

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4. Assuming that an assessor of a 3rd class county such as Jefferson County were to have a total number of employees, both clerical, stenographic and as deputy assessors, to satisfy the numerical requirement under the provisions of the Workman's Compensation Act referring to major employers, would such an assessor be automatically under Workman's Compensation?

5. I would further be interested in any comments your office may have in the above areas of consideration as they would apply to other public officers of the County.

"If the above inquiries are not clear to the member of your staff to whom this request is directed, please ask for clarification before attempting to render an official opinion."

In answer to your first question, we enclose a copy of an opinion rendered by this department on October 26, 1951, to Phillip A. Grimes, Prosecuting Attorney of Boone County, which opinion holds that such employees as you mention are county employees and that the county is liable for social security contributions to the extent, and upon the basis, of the amount paid by the county to such employees.

In regard to your second question, we will state that we do not believe that a county employee would come within the compass of the Employment Security Law. Subparagraph 6 of paragraph 16 of Section 288.030, Cum. Supp. 1955, reads:

"(6) The term 'employment' shall not include:"

This is followed by subparagraph (e) which reads:

"(e) Service performed in the employ of this state or of any political subdivision thereof or of any instrumentality of this state or its political subdivisions:"

This would include deputy assessors, since they are, to a limited extent, employees of the county, and since a county is a political subdivision of the state, such deputy assessors, therefore, do not come within the compass of the state employment security law, so far as the county is concerned. Regarding personal liability of the assessor we will not give an opinion since that is a matter involving only a private individual.

In regard to question numbered three, as to any liability on the part of the assessor personally, or of the deputy assessor

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personally, we do not give an opinion, since this is a matter personal to them.

Your final question relates to employees of the assessor automatically coming under the provisions of the Workmen's Compensation Act.

Section 287.030 reads:

"The word 'employer' as used in this chapter shall be construed to mean:

(1) Every person, partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay;

(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi corporation, or cities under special charter, or under the commission form of government, which elects to accept this chapter by law or ordinance.

(3) Any reference to the employer shall also include his insurer."

From the above, it will be seen that a county and county employees are not "automatically" under the provisions of the Workmen's Compensation Act so far as salary paid to them by the county is concerned, but that to come within it, positive action must be taken by the county court.

We note the general invitation contained in your Number 5. We hesitate to make this attempt because you do not indicate, with sufficient definiteness, the information which you desire.

#### CONCLUSION

It is the opinion of this department that in the case of part time deputy county assessors, a portion of whose salary is paid out of the county treasury and a portion by the assessor personally, are county employees and that the county is liable for social security contributions to the extent of the amount

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of salary which it pays to them; the county is not liable for contributions for unemployment compensation for deputy assessors; and part time deputy assessors would not, to the extent that their salaries are paid by the county, automatically come within the provisions of the Workmen's Compensation Act.

The foregoing opinion, which is hereby approved, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

HPW/ld/bi

Enc.