

SOCIAL SECURITY:



A county which has accepted the provisions of Chapter 105 RSMo Cum. Supp. 1955, extending the benefits of Title 2 of the Social Security Act (42 U.S.C.A. Sec. 401 et seq.) to its employees, is required to pay into the state contribution fund, with respect to wages, amounts at the rates specified in the plan and agreement; and that the county or the proper official thereof can deduct such amounts from wages paid to an elective county official, such as the prosecuting attorney.

March 8, 1957

Honorable Roy Wilson
Clerk of the County Court
Carter County
Van Buren, Missouri

Dear Mr. Wilson:

Reference is made to your request for an opinion of this office, wherein you inquire as to whether a county, which has adopted the provisions of Chapter 105 RSMo Cum. Supp. 1955, is required to withhold social security contributions from the salary or wages due an elective or appointive county official, such as the prosecuting attorney.

Section 105.350 authorizes each political subdivision of the state to submit to the state agency, for approval, a plan and agreement for extending the benefits of Title 2 of the Social Security Act (42 U.S.C.A. Sec. 401 et seq.) to its employees. Said section provides that said plan shall be approved by the state agency if, among other things, it provides that "all services which constitute employment, as defined in Section 105.300, and are performed in the employ of the political subdivision" are covered by the plan.

The term "employment" is partially defined in Section 105.300 as follows:

"'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' under applicable federal law, in the agreement between the state and the Secretary of Health, Education and Welfare, except services, which in the absence of an agreement entered into under sections 105.300 to 105.440 would constitute 'employment' as defined in section 210 of the Social Security Act (42 U.S.C.A. §410); * * *".

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The term "employee" is defined in said section as follows:

"'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 subdivisions; and employees of a group of two or more political subdivisions of the state organized to perform common functions or services;"

It is readily apparent that an elective county official, such as the prosecuting attorney, falls within the definition of "employee", for the purpose of this law, and is, while discharging the duties of his office, in employment as that term is defined.

Section 105.370 RSMo Cum. Supp. 1955, provides that each political subdivision, whose plan has been approved, shall pay into the contribution fund, with respect to wages, contributions in the amounts and at the rates specified in the agreement entered into by and between the subdivision and the state agency. Said section then provides that the political subdivision may deduct such contributions from the wages when paid as follows:

"2. All moneys in the fund shall be mingled and undivided. Subject to the provisions of sections 105.300 to 105.440, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts which are necessary to the administration thereof consistent with the provisions of sections 105.300 to 105.440."

You further inquire whether the county is required to make other withholdings. We assume that you refer to withholdings required by the federal government under the Internal Revenue Code. Since this would involve an interpretation of federal law rather than state law, we suggest that you submit your inquiry directly to the appropriate district director of internal revenue.

CONCLUSION

Therefore, it is the opinion of this office that a county which has accepted the provisions of Chapter 105 RSMo Cum. Supp. 1955, extending the benefits of Title 2 of the Social Security Act

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(42 U.S.C.A. §401 et seq.) to its employees, is required to pay into the state contribution fund, with respect to wages, amounts at the rates specified in the plan and agreement, and that the county or the proper official thereof can deduct such amounts from wages paid to an elective county official, such as the prosecuting attorney.

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

Very truly yours,

John M. Dalton
Attorney General

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