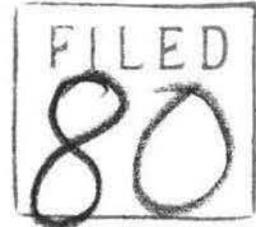


SOIL CONSERVATION DISTRICTS: (1) Soil District on "instrumentality" within the meaning of the Old Age and
OLD AGE AND SURVIVORS INSURANCE: Survivors Insurance Act; (2) services of soil district employees constitute "employment" within the meaning of Old Age and Survivors Insurance Act; (3) upon adoption and approval of a plan as required by Sec. 105.340 RSMo 1959 (OASI Act) employees of a soil district may be covered by OASI.

July 12, 1961



Dr. John W. Schwada
Comptroller and Budget Director
State Capitol
Jefferson City, Missouri

Dear Dr. Schwada:

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

"The question has been raised with this office as to whether or not employees of Soil Conservation Districts should be covered by OASI, as provided in Chapter 105.300 ff. RSMo. 1959. The question seems to hinge on whether or not the above districts are instrumentalities of the State or its political subdivisions. Chapter 278, RSMo. 1959 provides for the establishment of Soil Conservation Districts and outlines their organization and the extent of their authority.

"In view of the above provisions, the question to which an answer is requested seems to be this:

Are employees of Soil Conservation Districts covered by OASI and if so, should they be covered by direct agreement between the Soil Conservation District and this office, or by some other method?

"We will appreciate having your opinion on this matter."

On July 13, 1951, the State of Missouri entered into an agreement with the United States Government, concerning the extension of benefits under the Old Age and Survivors Insurance (42 USCA §401 et seq) to employees of the State of Missouri and

its political subdivisions and instrumentalities.

Sections 278.060 to 278.150 RSMo 1959, are known as the Soil Conservation Districts Law. These sections provide for the establishment of soil conservation districts, each of which is to be governed by a board of soil district supervisors. The boards are authorized to employ people to assist in the performance of their functions.

The question here presented is whether these employees are eligible to be covered by Old Age and Survivors Insurance under the agreement between the State of Missouri and the United States Government.

In order to be eligible, these employees must perform services to which the provisions of Section 105.310, RSMo 1959, apply. The applicable portion of that section reads as follows:

"1. The state agency, with the approval of the governor, shall enter into on behalf of the state an agreement with the Secretary of Health, Education and Welfare, consistent with sections 105.300 to 105.440, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the state or of any of its political subdivisions, or of any instrumentality of any one or more of them, with respect to services specified in such agreement, which constitute employment as defined in section 105.300. Such agreement may contain provisions relating to coverage, benefits, contributions, effective date, modifications and termination of the agreement, administration and other appropriate provisions, and except as otherwise required by the Social Security Act as to the services to be covered, such agreement shall provide the benefits will be granted to employees whose services are covered by the agreement, their dependents and survivors, on the same basis as though the services constituted employment within the meaning of Title 2 of the Social Security Act (42 U.S.C.A. §401, et seq).

* * * * *

"4. All services shall be covered by the agreement which:

(1) Constitute employment as defined in section 105.300.

(2) Are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision; except services performed in the employ of any municipality in connection with its operation

of a public transportation system as defined in section 210 (1) of the Social Security Act (42 U.S.C.A. §410); and there is hereby granted to the governing body of such municipality and the officers in charge of such transportation system such powers and authority as may be necessary to comply with the Social Security Act in extending the benefits of the federal old age and survivors insurance system to the employees of such public transportation system; and

(3) Are covered by a plan which is in conformity with the terms of the agreement approved by the state agency under section 105.350."

* * * * *

The requirements of this section will be discussed in the following order for purposes of logical presentation:

1. Whether Soil Conservation Districts are "instrumentalities" of the State of Missouri.

2. Whether the services performed by the employees of the Soil Conservation Districts constitute "employment" as the word is defined in Section 105.300, RSMo 1959.

3. Whether these employees are covered by a plan which is in conformity with an agreement approved by the division of budget and comptroller as required by Section 105.350, RSMo 1959.

Are the soil conservation districts here involved "instrumentalities" of the State of Missouri?

Section 105.300(7) RSMo reads:

"'Instrumentality', an instrumentality of a state or of one or more of its political subdivisions but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or such political subdivision and whose employees are not by virtue of their relation to such juristic entity employees of the state or such subdivision;"

This section does not define what an instrumentality of a state is; in effect it placed three added requirements which must be met by instrumentalities before they come under the Old Age and Survivors Insurance Act.

The operation of a soil conservation district is a governmental function. *Dillon Catfish Drainage District v. Bank of Dillon* (1928)

143 S.C. 178, 141 S.E. 274; Hopkins v. Upper Sciota Drainage and Conservation District (1940) 67 Ohio App. 505; 37 N.E.2d 430. Such districts are, therefore, instrumentalities of the state. In the Hopkins case, supra, an Ohio conservation district, similar in nature and operation to Missouri soil conservation districts, was held to be an instrumentality of the state. The court said i.c. 37 N.E.2d 431:

"The conservancy district, through the statutory provision relating to its organization and the delegation of the powers mentioned, is an instrumentality of the state government, and in the exercise of such powers, performs only a governmental function."

The three added requirements placed on an instrumentality by the Old Age Survivors Insurance Act are that it be (1) a juristic entity which is (2) legally separate and distinct from the state or any political subdivision and (3) whose employees are not by virtue of their relation to such juristic entity employees of the state or any political subdivision.

Do the soil conservation districts meet these requirements? No exact definition of the words "juristic entity" can be found.

Black, Law Dictionary (4th ed. 1951) defines the word "juristic" as:

"Pertaining or belonging to, or characteristic of jurisprudence, or a jurist, or the legal profession."

The same work defines the words "juristic act" as:

"One designed to have a legal effect, and capable thereof."

"An act of a private individual directed to the origin, termination, or alteration of a right. Webster, Dict., citing T.E. Holland."

From these two definitions it is apparent that the word "juristic" is similar to the word "legal" so that it may be said that the words "legal entity" are similar in meaning to the term "juristic entity".

The case of Department of Banking v. Hedges (1939) 136 Neb. 382, 386, 286 NW 277, 281 defined the term "legal entity" as follows:

"The word 'entity' means a real being, existence.
'Legal entity' therefore, means legal existence." * * *

Section 278.120, RSMo 1959, defines the nature, powers and duties of soil conservation districts. In doing so it states in part:

"1. Any soil district organized under the provisions of this law shall be a body corporate and shall possess only such powers as herein provided, but any such powers possessed by said body corporate shall be particularly limited by the following provisos; provided, that the private property of any land representative or owner of property in such soil district shall be exempt from execution for the debts of the body corporate or soil district and no land representative or owner of property within said soil district shall be liable or responsible for any debts of the body corporate or soil district, and provided further, that no property of any character, title to which is not vested in said soil district, or a soil district as the case may be, shall ever be subject to any lien for any claim or judgement of or against said district, or a soil district, as the case may be. Any soil district, so organized shall be officially known and titled 'The Soil District of _____ County', and shall be so designated by the county court by order of record, and in that name shall be capable of suing and being sued and of contracting and being contracted with.

"2. A soil district through the board of soil district supervisors thereof shall have the following authority and duty in addition to other authority and duty granted in other sections of this law;"

* * * * *

(5) To make and execute contracts and other legal instruments, necessary for the saving of the soil in that district, subject to approval by the state soil districts commission;"

Since soil conservation districts are bodies corporate, can sue and be sued, and can make and execute contracts and other legal instruments, they must be said to have a legal existence. Having such an existence, they are "legal" or "juristic" entities. The first requirement is, therefore satisfied.

In regard to the second requirement, we can think of no instrumentality which is separate and distinct, used in the broadest sense, from its superior. However, this phrase is qualified by the term "legally", i.e. "legally separate and distinct."

A soil conservation district is not in all respects separate and distinct from the state from which it derives its authority. However, we do not believe that this will prevent it from being an entity legally separate and distinct from the state. The following verification of this conclusion is found in the case of Virginia Mason Hospital Ass'n v. Larson, Wash. 114 P. 2d 976, where the Supreme Court of Washington defined the term "separate entity" as follows (1.c. 114 P.2d 986):

"We do not believe that lack of independence from other organizations is the test of whether an institution is a separate entity. Every institution is in a measure dependent upon the functioning of other institutions which provide goods and services necessary for the efficient operation of the former. But each may be nevertheless a completely separate entity. If the control of each of these institutions were in separate hands, it would be clearly evident that the mere interdependence for goods and services would not merge the identity of these organizations."

The third requirement, stating that employees of soil conservation districts must be such independent of any employment by the state or a political subdivision of the state is satisfied by the following language of Section 278.110, RSMo 1959.

"* * *The board of soil supervisors may employ within the limits of available funds such assistants as they may require in the performance of their duties, and shall determine the qualifications, compensation and duties of such employees."

As stated above, we believe that a soil conservation district is an instrumentality of the State of Missouri. We further believe that a soil conservation district as a body corporate is a juristic entity legally separate and distinct from the state and county, the employees of which are not also employees of the state or any political subdivision of the state. The three requirements placed on an instrumentality in order for it to come under the Old Age and Survivors Insurance provisions are, therefore, satisfied.

We now turn to the question whether the services performed by soil district employees constitute "employment" within the meaning of Section 105.300, RSMo 1959. The pertinent part of that section reads as follows:

"* * * (4) '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); any services performed by an employee as a member of a coverage group, in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, which retirement system is supported wholly or in part by the state or any of its instrumentalities or political subdivisions, shall not be considered as 'employment' within the meaning of sections 105.300 to 105.440; however, service which under the Social Security Act may be included only upon certification by the governor in accordance with section 218(d)(3) of that act shall be included in the term 'employment' if and when the governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to section 105.355;"

This section sets out three criteria which determine whether a certain service constitutes "employment" within the meaning of the statutes. First, the service must be such as may be covered, according to 42 USCA §418 (the "applicable federal law" in this instance) in an agreement between the state and the United States Government. Second, the service must not be one which would constitute "employment" under 42 USCA §410 in the absence of any agreement between the state and the Secretary of Health, Education and Welfare. Third, the employee performing the service must not be under a retirement system supported wholly or in part by either the state, political subdivision of the state, or instrumentalities of the State, at the time an agreement for Old Age and Survivors Insurance purposes becomes applicable to him. This third criteria may, however, be avoided by compliance with 42 USCA § 418 (d)(3), providing for a certificate from the Governor of Missouri to the Secretary of Health, Education and Welfare stating that a referendum held among the state employees in question showed a majority in favor of being included in the agreement between the secretary and the State of Missouri.

We must now determine whether the services performed by employees of soil conservation districts are such as satisfy these three criteria.

Are the services of soil conservation district employees such as may be included in an agreement between the state and the Secretary of Health, Education and Welfare, under the provisions of 42 USCA § 418? 42 USCA §418 (a)(1) states:

"(a)(1) The Secretary of Health, Education and Welfare shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any

political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request."

42 USCA §418 (c)(1) states:

"An agreement under this section shall be applicable to any one or more coverage groups designated by the State."

42 USCA §418 (Definitions) (5)(B) states:

"The term 'coverage group' means * * * (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function;"

42 USCA §418 (2) states:

"(2) The term 'political subdivision' includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions."

Under 42 USCA §418, a state may designate any group of employees for coverage under an Old Age and Survivors Insurance agreement if the services they are performing are not connected with a proprietary function. As stated above the operation of a soil conservation district is a governmental, not a proprietary function (Dillon Catfish Drainage Dist. v. Bank of Dillon, supra, and Hopkins v. Upper Scioto Drainage and Conservation Dist., supra. If therefore, the State of Missouri should desire that the employees of its conservation districts be covered by Old Age and Survivors Insurance, such employees would be eligible to be included in the agreement between the State and the United States Government.

Are the services performed by soil district employees such as would not constitute employment under 42 USCA §410?

42 USCA §410(a)(7) reads as follows:

"(a) The term 'employment' * * * * shall not include * * *

(7) Service * * * performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;"

Since a soil district is an "instrumentality" of the state, this section applies to its employees, and the second requirement of Section 105.300(4), RSMo 1959, is met.

The third requirement of Section 105.300(4) RSMo 1959 concerns the fact of whether or not the employees involved are under another retirement system financed by funds of the state or of one of its political subdivisions. In your letter of May 15, 1961, you state that soil district employees are not presently under a publicly supported retirement plan. All requirements of Section 105.300(4) RSMo 1959 are therefore satisfied.

One matter remains to be disposed of before soil district employees are covered by Old Age and Survivors Insurance. Each soil district must be covered by a plan which is in conformity with an agreement approved by the division of the budget and comptroller. In your letter of May 15, 1961, you state that no soil district has specifically requested coverage at this time; we therefore assume that no such plan has been formed. When such a plan is adopted, and approved in the manner prescribed by Section 105.350, RSMo 1959, all requirements for the coverage of soil district employees by Old Age and Survivors Insurance will be satisfied.

CONCLUSION

It is the opinion of this department that a soil district is an "instrumentality" within the meaning of Section 105.300(7) RSMo 1959; that the services of employees of a soil district constitute "employment" as defined by Section 105.300(4), RSMo 1959, and that upon the adoption and approval of a plan as required by Section 105.340, RSMo 1959, such employees of a soil district may be covered by old age and survivors insurance.

The foregoing opinion, which I hereby approve, was prepared by my assistant Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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