SOCIAL SECURITY:
CITY COLLECTOR:
EMPLOYEE:

The city collector of Jackson, Missouri, is an employee of such city and subject to OASI coverage under the agreement between such city and the State.

August 22, 1962

FILED
236

OPINION NO. 236

Honorable Charles D. Trigg
Comptroller and Budget Director
State Capitol
Jefferson City, Missouri

Dear Mr. Trigg:

You have requested the official opinion of this office on the following question:

> "Is the City Collector of the City of Jackson, Missouri, an employee of such city and subject to OASI coverage under the agreement between the city and the state or is such collector self-employed?"

The agreement to which you refer was entered into pursuant to Section 105.350, RSMo 1959, and covers all eligible "employees" of the City of Jackson. As defined therein, the term "employee" means "elective or appointive officials and employees of the Political Subdivision." A similar definition of "employee" is contained in Section 105.300, RSMo 1959, namely, "elective or appointive officers and employees of any political subdivision of the state." And see 42 U.S.C.A. Section 418 (b) (3) which provides that the term "employee" includes an officer of a political subdivision.

Under the agreement in question, "all services performed by individuals as employees of the Political Subdivision", with certain exceptions not here pertinent, are included. Similarly, Section 105.300, RSMo 1959, defines the term "employment" as "any service performed by an employee" of the political subdivision.

We note also that Section 105.350, RSMo 1959, expressly provides that no plan for extending the benefits of OASI to employees of a political subdivision may be approved unless 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. Significantly, 42 U.S.C.A., Section 418 (c), authorizes the exclusion from coverage, upon the request of the State, of services in any class of elective positions or positions

the compensation for which is on a fee basis. However, our statute evidences the legislative intent that no such exclusions may be requested. And the agreement itself, in conformity to the statute, makes no such exclusion.

The city collector of Jackson, Missouri, is an elective officer of that political subdivision. He is elected for a term of two years, Section 79.050, RSMo 1959, but may be removed from office for cause shown, as any other elective officer of that city, Section 79.240, RSMo 1959. Various statutes provide for and relate to the duties the city collector is required to perform. For example, Section 95.360, RSMo 1959, provides as follows:

> "It shall be the duty of the city collector to pay into the treasury, monthly, all moneys received by him from all sources which may be levied by law or ordinance; also, all licenses of every description authorized by law to be collected, and all moneys belonging to the city which may come into his hands. He shall give such bond and perform such duties as may be required of him by ordinance."

Among other statutory provisions relating to the duties of a city collector are Sections 79.310, 94.280, 94.290, 94.230, 94.320, and 94.330, RSMo 1959.

The city collector, as all other officers of the city, is required to take and subscribe to an official oath and give bond to the city before entering upon the duties of his office. Section 79.260 and Section 95.360.

Pursuant to the foregoing statutes relating to cities of the fourth class, the City of Jackson has enacted an ordinance setting forth the duties of the collector and requiring bond to be furnished. That ordinance (No. 757) provides in part as follows:

> "(5) COLLECTOR TO PAY OVER. It shall be the duty of the City Collector to make weekly deposits in the City Treasury of all moneys received by him from all sources, whatever, which may be levied by law or ordinance; also all licenses of every description authorized by law to be collected, and all moneys belonging to the city which may come into his hands. For which deposits the said collector shall take receipts from the City Treasurer and at the time of making his monthly

> report, he shall present all receipts for the previous month to the Treasurer, who shall give him duplicate receipts for the total month's deposits or payments to the Treasurer, and one of such receipts shall be filed with the City Clerk, who shall endorse the date of filing thereon and preserve the same in the files of her office."

Clearly, the city collector of Jackson, Missouri, is an "employee" of the City of Jackson whose services are covered by the agreement between the city and the state and not a self-employed individual. We can perceive no distinction in this respect between the office of city collector and that of any other elective officer of the City of Jackson who is covered by said agreement. The suggestion has been made that there is such a distinction based upon the contention that the city collector receives no "wages." Under the facts, there is no basis for such contention.

The term "wages" is defined in Section 105.300, RSMo 1959, as "all remuneration for employment as defined herein." With respect to the compensation of the city collector, Section 79.-270, RSMo 1959, provides as follows:

> "The board of aldermen shall have power to fix the compensation of all the officers and employees of the city, by ordinance. But the salary of an officer shall not be changed during the time for which he was elected or appointed."

Ordinance No. 757 of the City of Jackson, above referred to, enacted pursuant to the authority of Section 79.270, fixes the compensation of the city collector as follows:

> "(6) COMPENSATION OF COLLECTOR. The City Collector shall receive as full compensation for his services remuneration as follows: One and one-half (1 1/2) per centum on all revenue from water and light collections; Three (3) per centum on general taxes on real and personal property taxes, licenses and all other revenues collected."

From time to time thereafter, other ordinances have been enacted changing the amount of the compensation of the city collector. The last such ordinance of which we have been informed is No. 1571, which, to the extent here relevant, provides as follows:

> "Section 1. That the compensation of the City Collector of the City of Jackson, Missouri, shall be fixed at the sum of one and one-fourth per cent of the funds from all general taxes levied and collected in the City of Jackson, Missouri, and the City Collector shall receive the further sum of one and one-fourth per cent (1 1/4%) from all water and light funds collected in the City of Jackson, Missouri."

It is thus apparent that the city collector of Jackson receives remuneration for the services he performs as an officer of the city. This remuneration constitutes "wages" as defined by the statute. It is to be noted that the compensation the collector receives is a percentage of the revenue he collects. This revenue is money collected for the city and belongs entirely to the city, and the collector must account therefor. The fact that the collector is paid out of such money so collected by him does not alter the fact that he receives remuneration or "wages" from the city for the services he performs on behalf of such city.

Section 105.370, RSMo 1959, requires each political subdivision whose plan has been approved to pay to the trustee, with respect to wages, contributions in the amounts and at the rates specified in the agreement. Each such political subdivision is authorized to impose upon its employees as to covered services a contribution with respect to wages not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act and to deduct the amount of the contribution from the wages when paid. Hence, the city could have required such contribution from the collector, to be deducted from the commissions payable to him. Whether it did so or not, the city is liable for the full amount agreed to be paid. Section 105.370 expressly provides: (1) that contributions collected from the employee shall be paid to the trustee "in partial discharge of the liability of the political subdivision" and (2) that failure to deduct the contribution shall not relieve the employer of liability therefor.

We note also that under the applicable federal law, the compensation to which the city collector is entitled could in no event be deemed "net earnings from self-employment." 42 U.S.C.A. Section 411 (a), and 26 U.S.C.A. Section 1402 (a) define that term as meaning the gross income derived by an individual from any "trade or business" carried on by such indivdual. 42 U.S.C.A. Section 411 (c) (1), and 26 U.S.C.A. Section 1402 (c) (1), expressly exclude from the term "trade or business"

the performance of the functions of a public office. Clearly, the compensation of the city collector arises from the performance of his functions as a public officer.

CONCLUSION

It is the opinion of this office that the city collector of the City of Jackson, Missouri, is an employee of such city and subject to OASI coverage under the agreement between such city and state, and that the City of Jackson is liable under such agreement for all payments agreed by it to be made with respect to the wages of such employee.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JN:gm:jh