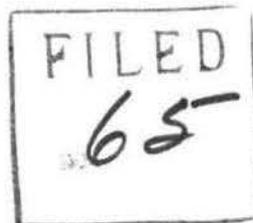


COUNTY ASSESSORS: For purposes of the Social Security Act:
COUNTY CLERKS: 1. County clerks and county assessors are
SOCIAL SECURITY: employees of the counties and township
TOWNSHIP COLLECTORS: collectors are employees of the townships
wherein they were elected to office. They
are not "joint employees" of several political entities. 2. A
township collector is an official of the township. 3. Fees derived
by a township collector from collecting school taxes do not consti-
tute "wages"; therefore, a township is not responsible for reporting
and paying the employer's share of the Social Security Tax thereon.

OPINION NO. 65

June 11, 1970

Honorable John C. Vaughn
Comptroller & Budget Director
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Vaughn:

This official opinion is issued in response to the request contained in your letter concerning the reporting of fees for social security purposes paid county clerks and county assessors by both the state and the county and fees paid township collectors by the townships, counties and state.

More specifically, the questions raised are as follows:

1. "Are these individuals considered a 'joint employee' and the present maximum of \$7,800 reported in aggregate or should maximum deductions and maximum reportings be made separate by each?"
2. "In addition is the Township Collector considered to be an official of the Township?"
3. "Is the Township responsible for reporting and paying the matching portion of contributions due on fees derived from collecting school taxes by the Collector?"

Although services performed in the employ of a state or political subdivision thereof are expressly exempt from the provisions of the Social Security Act (Section 410(a)(7)), the benefits of Title 2 of the Act and the taxes imposed by the Internal Revenue Code in connection therewith may be extended to the states, their political

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subdivisions and the employees thereof by appropriate agreements with the Secretary of Health, Education and Welfare. The State of Missouri has entered into such an agreement in conformity with Section 218 of the Social Security Act and the enabling law of Missouri (Section 105.300 et seq., RSMo 1959, as amended).

A determination of the status of the officials in question as well as the rights and obligations of the state and its political subdivisions requires an interpretation of the Social Security Act, the Missouri statute and the Section 218 Agreement. It entails also a consideration of other Missouri statutes and general principles of law applicable to the problem.

The nature or character of these offices and the duties to be performed by the holders thereof are prescribed by the constitution and statutes.

Chapter 51, RSMo 1959, relating to county clerks provides:

"In each county of this state there shall be an office of clerk of the county court, to be styled 'The Office of the Clerk of the County Court.' (Section 51.010).

"At the general election in the year 1946, and every four years thereafter, the qualified electors of the county at large in each county in this state shall elect a clerk of the county court, who shall be commissioned by the governor and who shall hold his office for a term of four years and until his successor is duly elected or appointed and qualified. Each clerk of the county court shall enter upon the duties of his office on the first day of January next after his election." (Section 51.020).

It is further provided that the county clerk shall give bond conditioned upon faithful performance of the duties of his office, (Section 51.070, RSMo 1959) and shall take and subscribe to an oath to support the Constitution of the United States and of the State of Missouri and demean himself faithfully in office. (Section 51.060, RSMo 1959). The duties of the county clerk as set forth in the statutes need not be considered in detail herein, it being sufficient to observe that these duties relate to business matters affecting the county in which the clerk serves.

Chapter 53, RSMo 1959, relating to county assessors, contains authority for election of this official by the qualified voters in each county and sets forth requirements of oath and bond. The oath charges that he will demean himself faithfully in office and assess all of the real and tangible personal property in the county. (Section 53.020, RSMo 1959). The duties of the county assessor relate

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to business matters of the county which he serves.

Chapter 65, RSMo 1959, relating to township organization counties states:

"The citizens of the several townships in all counties having adopted the township organization law of this state * * * shall assemble * * * for the purpose of electing township officers * * * " (Section 65.060).

* * *

"There shall be chosen at the biennial election in each township * * * one township collector, * * * " (Section 65.110).

The collector must furnish bond conditioned upon faithful and punctual collection and payment of all state, county, township and other revenue, including school taxes, and that he will in all things faithfully perform all the duties of the office of township collector according to law. (Section 65.460). The duties of this official are expressly set forth in the constitution and statutes and relate to business transacted within the township.

While the law imposes on these county officials certain duties for the benefit of the state as well as the county, and township collectors have a statutory duty to collect state, county and school taxes as well as township taxes, they are nonetheless officers only of the political subdivisions wherein they are elected. Their duties extend only to the boundaries of the subdivisions and are not by any means statewide in character. The work performed for the state as required by statute relates only to matters which must be performed in the county or township respectively, and as to the county functions handled by township officials they are restricted to township boundaries and not to the county as a whole.

The Supreme Court of Missouri has made it clear that state officers must have statewide functions. In State ex rel. Kirks v. Allen, Mo.1952, 250 S.W.2d 348, the court held as follows:

"Relator next contends that jurisdiction is here in that Sec. 3, Art. V, V.A.M.S. vests in this court appellate jurisdiction in all cases in which 'any state officer as such is a party'; and that respondent prosecuting attorney, a party in his official capacity, is a 'state officer.' True, there has been delegated to respondent, a duly qualified and acting prosecuting attorney, some substantial part of the state's sovereign power, to be independently 'exercised with some continuity and without control of a superior power other than the law.' See State ex rel. Webb v. Pigg, 249 S.W.2d 435, decided by this

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court en banc, June 9, 1952. Yet that is not the determinative factor as to our jurisdiction under Sec. 3, Art. V.

"In State ex rel. Rucker v. Hoffman, Judge, 313 Mo.667, 288 S.W.16,17 (wherein it was held that a circuit judge was not a 'state officer' under the constitutional provision prescribing appellate jurisdiction), we said that no officer is a 'state officer' under such constitutional provision 'unless his official duties and functions are coextensive with the boundaries of the state.' The ruling in the Hoffman case has since been followed in State ex rel. and to use of Gorman v. Offutt, Mo.Sup., 9 S.W.2d 595; Bank of Darlington v. Atwood, 325 Mo. 123, 27 S.W.2d 1029; Dietrich v. Brickey, 327 Mo. 189, 37 S.W.2d 428; and Fischbach Brewing Co. v. City of St. Louis, 337 Mo.1044, 87 S.W.2d 648.

"We again approve, and here apply, the rule applied in those decisions. Respondent prosecuting attorney's official duties and functions are not coextensive with Missouri's boundaries. His rights and duties (to exercise portions of the state's sovereign powers) are limited to Linn County, the county in which he was elected and which he is now serving. We hold that he is not a 'state officer' within the purview of Sec. 3, Art. V."

Likewise in Hasting v. Jasper County, Mo. 1926, 282 S.W.700, the court held:

"Nor can it be said that probation officers are state officers. We have held that the words 'state officers' as used in the Constitution refer to such officers whose official duties and functions are co-extensive with the government of the state. Following this rule, we have held that a sheriff, deputy sheriff, and a clerk of a circuit court are not state officers, for the reason that their jurisdiction is confined to a county. State ex rel. Walker v. Bus, 36 S.W.636, 135 Mo.325, 33 L.R.A. 616; State ex rel. Holmes v. Dillon, 2 S.W. 417, 90 Mo.229; State ex rel Bender v. Spencer, 3 S.W. 410, 91 Mo. 206; State ex rel Conway v. Hiller, 180 S.W. 538, 266 Mo.242, loc. cit. 262."

The same rule appears to be applicable insofar as the relationship between the township collector and the county is concerned. In other words, the township collector is an officer of the township but not of the county or the state, and the county clerk and county assessor are officers of the county but not of the state or township. An opinion rendered by this office October 27, 1961, issued to Charles D. Trigg, bears on the matter under consideration. We enclose

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a copy of such opinion. A portion of the language of this opinion reads as follows:

" * * * This raises the question of whether township officers may be considered county officers within the meaning of the law. (House Bill 635, 71st General Assembly). In our opinion, a township officer is not a county officer and therefore in no event would the provisions of the new law be applicable to any township officer even if he otherwise met the requirements of that law.

* * *

"* * * While it is true that township collectors collect taxes for the county and state as well as the township itself (and also must account to the county court, Section 139.420), such fact does not make the collector a county officer any more than it makes him an officer of the school district by reason of collecting school taxes. * * * "

While the general rule is that an officer is not an "employee" of the political subdivision or instrumentality or body which he serves since strictly speaking there is no employment relationship between an officer and the sovereign which he serves, State ex rel. Hull v. Gray, 91 Mo.App.438 (1902); State ex rel Zevely v. Hackmann, 300 Mo.59, 254 S.W. 53 (1923); State ex inf. Barrett ex rel. Bradshaw v. Hedrick, 294 Mo.21, 241 S.W. 402 (1922); Section 218(b)(3) of the Social Security Act; Section 105.300(2), RSMo 1959, the enabling act, and Paragraph A(2) of the agreement between the Federal Government and the State of Missouri all provide that the term "employee" includes elective and appointive officers of the state and elective and appointive officers of any political subdivision of the state. Therefore, it is clear that the officers in question being officers of political subdivisions are, for purposes of the Social Security Act, employees of the political subdivisions as well. The fact that they are so considered for social security purposes does not alter their duties or the nature of their offices under state law.

Furthermore, it is our view that the status or character of the offices of these individuals is not changed by reason of the fact that part of the compensation therefor is derived from the fees deducted from moneys collected for the state or county or both as the case may be, or derived from fees collected from some source other than the funds of the particular political subdivision in which they are elected to serve. The fact that these officers perform services imposed by statute for the benefit of the state or a political subdivision of which they are not an officer and the further fact that they collect fees or compensation therefrom is not sufficient under the law to constitute an employment relationship

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between these parties.

Section 410(j) of U.S.C.A., relating to social security taxes, reads as follows:

"The term 'employee' means --

* * *

"(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; * * * "

In *Thurston v. Hobby*, 133 F. Supp. 205 (U.S.D.C., Mo. 1955), the court said:

" * * * The mere payment of wages, standing alone, is not enough to establish the relationship of employer and employee. * * * No one fact or circumstance is necessarily conclusive of such a relationship. It must be determined from all the surrounding circumstances shown to exist. In its common law and usually accepted sense, such relationship is tested by (a) the contractual relationship of the parties; (b) direction and control; (c) compensation to be paid therefor; and, (d) services rendered. * * * "

Again, the basic ingredient of a master and servant relationship is the right of a master to control physical activities of the servant or the right to direct the servant in regard to the manner of performance. *Coble v. Economy Forms Corporation*, 304 S.W.2d 47.

In *Knight v. Cameron Joyce & Co.*, 252 F.2d 103, it was held that under Missouri law in determining whether the relationship of master and servant exists, one of the essential elements is the right to control the manner and means of the service being performed as distinguished from controlling the ultimate results of the service. See also *Hammons v. Haven*, 280 S.W.2d 814; *Talley v. Bowen Construction Company*, 340 S.W.2d 701; *St. Francois County Savings & Loan Association v. Industrial Commission*, 395 S.W.2d 311.

In *Anderson v. Celebrezze*, U.S.D.C., N.D. of Indiana, Lafayette Area, Hammond Div. No. 147 (11/15/62) C.C.H. UIR-1 Fed. Par. 14733 (CB 1968-SSR 63-51c) it was held that where a state extended social security coverage under an agreement pursuant to Section 218 of the Social Security Act to employees of a county but not to employees of a township within such county, and where pursuant to state law, officials of the township appointed a deputy tax assessor who was compensated by the county but whose services were performed under the direct supervision and control of the township officials, the deputy tax assessor was an employee of the township and not an employee of the county, and since coverage was not extended to employees of the township, his services were not covered for social

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security benefit purposes. In the opinion the court said:

"The Bureau of Old-Age and Survivors' Insurance determined that the services performed by plaintiff as Deputy Tax Assessor in Union Township, White County, Indiana, did not constitute 'employment' as defined in the Act; that the remunerations received by him for such services were therefore not 'wages' creditable to his earnings record, and, therefore, that no benefits [are payable] to plaintiffs.

"It was clearly perceived by the hearing examiner that although the officials of White County were under the impression that plaintiff as a Deputy Union Township Assessor was covered by the agreement providing coverage for employees of White County and although the Attorney General of Indiana had submitted an opinion that Deputy Union Township Assessors were officers of Union Township and not of White County neither of those determinates could be binding upon the defendant, rather the hearing examiner considered all the factors relevant to the question of plaintiff's status, such as by whom the salary was paid, the degree of control which could be exercised over him and by whom in the discharge of his duties, etc. There was substantial evidence to support the conclusion that although the township officials were paid from the county treasury, this was merely a matter of administrative convenience and economy and that the county could not legally control the exercise by the township officials and their employees of their respective duties, whatever degree of cooperation there may have been between the two political subdivisions.

"Such being the case there can be no question but that the hearing examiner's decision that plaintiff was an employee of Union Township and not White County was supported by substantial evidence and therefore is conclusive."

Judgment was entered for the defendant.

In the present matter, the county and the township officials being elective officers, there is no contract of employment existing outside the statutes regulating such offices. There is no right on the part of the state, for example, to terminate the employment relationship and no control over the performance of the duties of the officials of these political subdivisions. Under these circumstances it is our view that no employment relationship exists between these

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officials and the state or between the township collectors and the counties.

There is nothing in the Social Security Act, the Statutes of Missouri or the Section 218 agreement between the state and federal government which creates such an employer-employee status in this situation except between the officer and the political subdivision in which he is elected.

Accordingly, it must be concluded that the county collectors and county assessors are officers and thus employees of the county, and the township collectors are officers and thus employees of the township in each instance. They are not employees of any other political entity. It follows that the county is the employer of the county clerk and the county assessor and the township is the employer of the township collector for the purposes of the Social Security Act, and the reporting of fees or wages required thereby should be made on this basis.

Attorney General Opinions rendered to Philip A. Grimes, dated October 26, 1951 and November 19, 1951, holding that certain officers are employees of the state and also employees of the county, are withdrawn.

The question raised by your letter as to the responsibility of the township to pay social security tax on fees received by its collector for collecting school taxes requires additional consideration herein. This presents the problem of what constitutes "wages" in addition to the employment relationship treated above.

Section 3111 of the I.R.C. of 1954 states as follows:

"In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages
* * * " (Emphasis supplied).

Section 3121 of the Code defines "wages" as follows:

"(a) Wages. --For purposes of this chapter, the term 'wages' means all remuneration for employment, * * * "

Section 105.300(11), RSMo 1959, as amended, (enabling act), provides:

"'Wages', all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of such remuneration which, even if it were for 'employment' within the meaning of the Federal Insurance Contributions Act, would not constitute 'wages' within the meaning of that act."

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In the situation under consideration there is an employer-employee relationship between the township and the township collector. There is no such relationship between the school district and the collector. The question is therefore whether the fees taken from taxes collected for the school district constitute "wages" within the meaning of the law. Stated a little differently, if the remuneration is paid by a third party rather than an employer, does it constitute "wages" upon which the tax is imposed?

Treasury regulations relating to the social security tax on employers (F.I.C.A.) contain the following language:

"§31.3111-4 Liability for employer tax

"The employer is liable for the employer tax with respect to the wages paid to his employees for employment performed for him."

The employer is liable for the employer tax with respect to the wages paid to his employees for employment performed for him.

Section 31.3121(a)-1 of the Internal Revenue Code entitled "Wages", reads as follows:

" * * *

"(b) The term 'wages' means all remuneration for employment unless specifically excepted * * * " (Emphasis supplied)

The Federal Government has issued a ruling (S.S.T.206,C.B. 1937-2, 451) wherein it was held:

" * * * In order to constitute wages subject to the Act, they must be received for services performed by an employee for his employer in an employment subject to the Law. The bonuses are not remuneration performed for the dealers, (Employer) but are compensation for services rendered to the manufacturer (Third party). The salesmen (Employees) are not employees of the manufacturer and therefore the bonuses do not constitute wages subject to the Act."

In another ruling of the Federal Government, i.e., 55 SST 56 (XV 51-8447) it was held that where services are performed by caddies for members of the M Club and they are compensated either directly or indirectly for such services by the club members, the club will not be required to pay the tax imposed by Section 901, Title IX of the Social Security Act with respect to such payments to the caddies even though the caddies may be its employees. If, however, the caddies perform any services for the club for which the club itself compensates them, the club is subject to the tax imposed by Section

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901 of the Act with respect to such employment.

In the matter under consideration the fees received from collecting school taxes are not paid by an employer to an employee for services performed for the employer. The township collector is not an employee of the school district and therefore the fees do not constitute wages subject to the Act.

CONCLUSION

Therefore, it is the opinion of this office that for purposes of the Social Security Act:

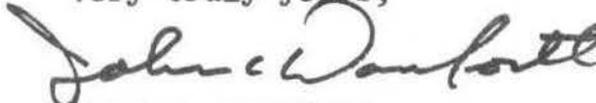
1. County clerks and county assessors are employees of the counties and township collectors are employees of the townships wherein they were elected to office. They are not "joint employees" of several political entities.

2. A township collector is an official of the township.

3. Fees derived by a township collector from collecting school taxes do not constitute "wages"; therefore, a township is not responsible for reporting and paying the employer's share of the Social Security Tax thereon.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Encls:
OP.-10/27/61-Trigg