



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

December 22, 1954

Hon. John H. Winters
Executive Director
Department of Public Welfare
Austin, Texas

Opinion No. MS-168

Re: Authority of the State to enter into an agreement with the Secretary of Health, Education and Welfare for the purpose of obtaining Federal Old Age and Survivors Insurance coverage for federally paid civilian employees of the Texas National Guard.

Dear Mr. Winters:

We quote the following excerpt from your letter requesting our opinion on the above-captioned subject.

"You recall that House Bill No. 89, Acts of the 53rd Legislature, First Called Session, was enacted to permit coverage of State employees who are paid wholly from Federal funds and would be Federal employees except for classification as State employees by the Federal Government. We understand that this was unquestionably intended to apply to the federally paid civilian employees of the State National Guard.

"The Title of the said Act provided, ' . . . except that no matching contribution will ever be paid by the State of Texas; . . . ' The said Act in amending Section 4 of the original enabling Act also provided, ' . . . any such agreements shall fully provide that they only cover State employees whose salaries are paid wholly from United States funds and that Texas does not by such agreement authorize any contribution from State funds as contributions.' Finally the emergency clause of the said Act stated, ' . . . participation in the National Social Security program will cost the State of Texas no additional money, . . . '

"In this connection Section 218(e)(1) of the Federal Social Security Act (42 U.S.C.A. 418 (e)(1)) provides as follows:

"(e) Each agreement under this section shall provide--

"(1) that the State will pay to the Secretary of the Treasury, at such time or times as the Administrator¹ may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code if the services of employees covered by the agreement constituted employment as defined in section 1426 of such code; . . ."

You state that you have negotiated with appropriate Federal officials with a view to submitting an Agreement with respect to National Guard civilian employees and that said officials have expressed concern over the effect of the above quoted excerpts from House Bill 89. You request that we advise you as to whether, in view of these provisions, the State is authorized to fulfill the requirements of Section 218(e)(1) of the Federal Act.

The Federal National Guard Bureau, pursuant to administrative arrangement between the Bureau and the several States, has undertaken to make funds available to the States to defray the contribution costs for the coverage of National Guard civilian employees. Section 1 of House Bill No. 89 amended Section 1(c) of Article 695g by adding to the definition of "employee" the following:

". . . also the word 'employee' shall include any State employee or officer who is paid wholly from United States funds and would be a Federal employee except for classification as a State employee by the Federal Government."

Thus at the time of the amendment it is evident that the Legislature was cognizant of the fact that civilian employees of the State National Guard are paid from Federal funds.

Although the wording of the other excerpts quoted by you may have been inept, we think that when House Bill No. 89 is

¹ All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by 1953 Reorg. Plan No. 1.

considered in its entirety and in the light of the circumstances attendant upon its enactment, it cannot be interpreted as prohibiting the very agreement it was designed to make possible.

No agreement for Federal Old Age and Survivors Insurance coverage for any coverage group can be obtained pursuant to the authorization of Article 695g unless Section 218(e)(1) is complied with. The Legislature must be presumed to have known this and that every agreement previously entered into between the State Department of Public Welfare and the Administrator or the Secretary of Health, Education and Welfare had obligated the State as required by Section 218(e)(1). This is true despite the fact that Article 695g makes every effort to devolve actual financial responsibility for matching contributions upon participating counties, municipalities or other political subdivisions and despite the fact that the Federal Act has provided that if the State fails to make, at the time due, payments provided for under an agreement, "the Administrator may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act." Sec. 218(j).

We are therefore of the opinion that the phrases quoted initially by you and to the effect that the State of Texas will never pay any matching contribution and that "participation in the National Security program will cost the State. . . no additional money, . . ." had reference to the actuality of the situation, that is, to the fact that such matching contributions will be paid from Federal funds. These provisions in no wise impede the authorization to enter into the requisite agreement with the Secretary of Health, Education and Welfare and therefore necessarily authorize the assumption of the primary obligation by the State as required by Section 218(e)(1).

Yours very truly,

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