



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

September 8, 1955

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Letter Opinion No. MS-238

Re: Coverage of district
attorneys for Federal
old-age and survivors
insurance (social se-
curity).

Dear Mr. Calvert:

Your request for an opinion concerns the coverage of district attorneys for Federal old-age and survivors insurance under an agreement for coverage of State employees as authorized by House Bill 666, Chapter 467, Acts of the 54th Legislature. You state that the question has arisen as to whether your department will be required to deduct employees' contributions when issuing salary warrants to the various district attorneys.

Subsection (c) of Section 1 of House Bill 666 reads, in part, as follows:

"(c) The term 'State Employee' in addition to its usual meaning shall include elective and appointive officials of the State,"

Your question in effect is whether the district attorneys whose salaries are paid by the State out of appropriations to the Judiciary Section of the Comptroller's Department are "officials of the State" and therefore State employees within the above-quoted definition. It is our opinion that this question should be answered in the affirmative.

The terms "officials of the State," "officers of the State," and similar terms take their meaning from the context in which they are used. Sometimes they mean only those officers whose authority extends throughout the State; in other instances they include officers whose duties are confined to a particular territory in the State. Cumberland Tel. & Tel. Co. v. City of Memphis, 198 Fed. 955 (W.D. Tenn. 1912); Ramsay v. Van Meter, 300 Ill. 193, 133 N.E. 193 (1921); Opinion of the Justices, 308 Mass. 619, 33 N.E.2d 275 (1941); Hastin v. Jasper County, 314 Mo. 144, 282 S.W. 700 (1926); State v. Romero, 17 N.Mex. 88, 125 Pac. 617 (1912); State v. Sanchez, 32 N. Mex. 265, 255 Pac. 1077 (1926). Thus in some

connections district attorneys are considered to be State officers, while in others they are not. Speilman Motor Co. v. Dodge, 295 U.S. 89 (1935); Morrow v. Strait, 186 Ark. 384, 53 S.W.2d 857 (1932); Smith v. Page, 192 Ark. 286, 91 S.W.2d 281 (1936).

For certain purposes under Texas law the officers in the State and county governmental organization are classified as State, district, county, and precinct officers; and district attorneys are district officers within the meaning of those statutes. For the purpose of social security coverage, however, the statutes do not separate employees of State and local governmental units into categories conformable to this classification of State and county officers. They are classified into coverage groups according to whether they are employees of the State or employees of a political subdivision, and judicial districts are not political subdivisions within the meaning of these statutes. The Texas Legislature, through House Bill 666 and Article 695g, Vernon's Civil Statutes, and amendments thereto, has extended authorized coverage to employees (including officers) of the State and all its internal political subdivisions, and the import of these statutes is that they apply to all officers who perform services for the State or any of its political subdivisions as defined in Article 695g. While not a controlling factor in deciding that officers of the various types of judicial districts are covered by these laws, it is significant that the statutes undoubtedly permit coverage of all other salaried officers of the State's judicial system. There is no valid ground for assuming that the Legislature intended to exclude these district officers from coverage.

Another significant observation is that in order to conform to Federal law the appointive officers and employees attached to these district offices would have to be classified for social security purposes under State law either as employees of the State or of one or more of its political subdivisions. In other words, the State cannot place them in a vacuum between these two general coverage groups. Since the term "employee" in each of the Texas statutes is defined to include officers, it appears that the scope of coverage for officers was intended to be as broad as the coverage for other employees, and that district officers as well as other district employees should be treated either as State employees or as employees of a political subdivision. The question becomes one of determining into which coverage group the particular officer or employee should be placed.

Within the classification of State and county officers which breaks them down into State, district, county, and precinct officers, the State officers are State employees and the county and precinct officers are county employees (i.e., employees of the county as a political subdivision) for social security purposes. As already stated, we are of the opinion that the Legislature intended to extend coverage to those officers who are classified as district officers as well as to the State, county, and precinct officers. They should be classified for social security coverage either as State employees or as county employees. The question, then, is the basis on which the classification should be made.

We are of the opinion that the primary consideration in determining whether an officer is a State employee for social security purposes is whether the State pays the officer's salary. Shamburger v. Commonwealth, 240 S.W.2d 636 (Ky. Ct. App. 1951), involved the question of whether the State or the county was liable for the employer's contributions on certain officers and employees who rendered services to both the State and the county, but who received their pay directly from the State. The court said that "the controlling point is the source of the compensation, i.e., who pays the salaries," and held that the State was liable. In Barnes v. Barnes, 241 S.W.2d 993 (Ky. Ct. App. 1951), the court held that the officers and employees of the circuit courts (comparable to our district courts) who received their compensation directly from the State were State employees within the purview of the State Social Security Act. We agree with the reasoning on which these opinions are based and believe that it is applicable to the Texas statutes.

You are therefore advised that the district attorneys who receive their pay directly from the State are State employees for the purpose of social security coverage, to the extent of the amount of salary which the State pays them. This ruling also applies to the Assistant District Attorney of the 53rd Judicial District who is paid out of the appropriation to your department.

APPROVED:

Yours very truly,

Marietta McGregor Payne
Reviewer

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