

OPINION
65-296

March 19, 1965 (OPINION)

Mr. Martin N. Gronvold, Director

North Dakota Old Age and Survivor Insurance System

and the Social Security Contribution Fund

RE: Social Security - Township Assessors - Coverage

This is in response to your letter in which you ask that the opinion issued by this office on November 28, 1960, be reviewed on the basis of additional information acquired since that time.

The opinion of November 28, 1960, was predicated and the conclusions were based largely upon the apparent statutory provisions. The language of Section 26-22-12 of the North Dakota Century Code requiring that assessors to solicit applications for hail insurance coverage was given great consideration. At the time we did not attempt to determine whether the language contained therein is directory or mandatory. In retrospect it appears that the statutory language has been considered to be directory by both the assessors and the Hail Insurance Department. Consequently what seemed apparent was, in fact, not so.

We have been reliably informed by the Insurance Department that approximately one-sixth of all the hail insurance written is through the township assessor. It further appears that the role of the township assessor has been at the best secondary to his other duties with reference to the soliciting and writing of hail insurance coverage. Another significant fact which was not seriously considered is that hail insurance is written only up to July twentieth of each year. Upon reliable information furnished by the Department, it now appears that only about one-fifth of the insurance is written after July first. The one-fifth includes all insurance written by all agents, including the assessors.

In reviewing the role of the assessor with reference to hail insurance it is found that the assessor has been relied upon in a lesser degree as time progressed. Thus, even though the statute appears to be mandatory it has been construed as directory by both the assessor and the Hail Insurance Department. The latest enactment by the North Dakota Legislature with reference to the Hail insurance Department, (House Bill No. 822 of the Thirty-ninth Legislative Assembly), clearly establishes that the provisions of Section 26-22-12 are directory rather than mandatory. The role of the township assessor will be reduced considerably more and depending on the action taken by the Insurance Commissioner the township assessor can be completely eliminated from the insurance program. Under the present law, (House Bill No. 822), the assessor will not be writing any insurance coverage after July 1, 1965. What insurance coverage he might write after January 1, 1966, will to a great degree depend

on the program initiated and implemented by the Insurance Commissioner.

Considering other legislation, which has been enacted which will reduce or eliminate the need of the township assessor, strongly indicates that any program initiated and implemented by the Insurance Commissioner will rely very little upon the present township assessor. In all probability the township assessor will be phased out in the near future.

With this additional information we deem it proper to review the statutory provisions pertaining to public employees for social security purposes and the administrative definition of the terms used therein. The term "employee" is defined in Section 52-1-02, subsection c and provides as follows:

* * * * *

- c. The term 'employee' includes an officer of a state or political subdivision as well as all persons employed in and by regulatory boards, commissions or councils recognized and established by the statutes of the State of North Dakota, except part-time elected persons or person hired on a fee basis if excluded by the federal-state agreement; * * * *." (Emphasis supplied.)

The exclusion provision, particularly the term "part-time elective position" has been administratively defined as follows:

"A part-time elective position'is an elective position for which ordinarily the compensation for services is at the rate less than \$50.00 a quarter in at least three calendar quarters of a calendar year."

The administrative definition was designed to eliminate those positions which gave no real benefit to the individual involved, and which were at the best extremely difficult to administer under the social security program. The term "ordinarily" is rooted in the term "ordinary", which is defined by Webster as "having or taking its place according to customary occurrences or procedure; usual; normal." It also gives as a synonym the term "normal, habitual."

Upon the facts now submitted and considered, it does not appear that the township assessor normally or usually receives compensation for his services in connection with hail insurance amounting to \$50.00 in the third quarter, beginning with July first. This is significant. The assessor as a part-time elected official receives \$50.00 or more in the second quarter, April through June, during which period he performs the services required of him as township assessor. He does not receive any compensation, except in unusual circumstances for services rendered, in any of the other quarters. As is material herein, the compensation, if any, for services performed under the hail insurance program would be limited to the second quarter and to the first twenty days in the third quarter. From the facts submitted it becomes rather obvious that the compensation for the first twenty days in the third quarter in the majority of instances will not reach

\$50.00.

In your letter you submit the following:

"* * * *In the year 1961 we arrived at a determination that out of some 1,700 townships there were 600 in which there was a possibility that the township assessor had received remuneration in two calendar quarters of a calendar year but there is no indication and no way of establishing whether or not he had performed services for those amounts of remuneration in two calendar quarters.* * * *."

In checking with the Insurance Department it is learned that the compensation to the assessor is lumped and unless one were to refer back to the time that the insurance was written there is no convenient manner of determining when the services were rendered from the payment records alone. At its best, tracing the records to determine when the services were rendered would be cumbersome and difficult. That in itself, however, is not a controlling factor.

It does become obvious that very few assessors will have written enough insurance coverage during the first twenty days of July to bring their remuneration or compensation up to \$50.00. It also clearly establishes that a great majority of the township assessors do not have earnings of \$50.00 or more in at least three calendar quarters of a calendar year. The greater majority will receive less than \$50.00 a quarter in at least three calendar quarters of a calendar year from the position of township assessor. Thus the individual assessors collectively as a group would be excluded.

On the additional information submitted and the construction which we are required to place upon the statutory provisions relating to township assessors and the hail insurance program, based partially upon administrative practices and the apparent acquiescence by the Legislature therein, and upon the recent legislation enacted, we find it necessary to modify the opinion of November 28, 1960.

It is our opinion that the office of township assessor comes within the exclusion provided for in Section 52-10-02 of the North Dakota Century Code and is a part-time elective position as said term is administratively defined. The opinion of November 28, 1960, is accordingly modified.

We are reliably informed that the individuals who will be affected or who will be involved herein are either employed in such a manner that they are under full social security coverage independent of the state agency or are self-employed so as to come within the social security provisions.

HELGI JOHANNESON

Attorney General