

**OPINION
50-114**

July 20, 1950 (OPINION)

OASIS ACT

RE: Coverage

This is in answer to your letter of June 23 in which you request the opinion of this office as to whether the employees and board members of the State Electrical Board are required to participate in the Old Age Survivor Insurance as set up in chapter 52-09 of the 1949 Supplement.

Certain questions have been raised which I will answer. Since the North Dakota State Board of Electricians was established by North Dakota Law it is my opinion that the employees of that board are required by our law to pay contributions to the North Dakota Old Age and Survivor Insurance System. The Old Age and Survivor Insurance System law defines employer under section 52-09-20, subdivision c (1) as follows:

The term "employer" means the state of North Dakota, the counties, municipalities, and all of the political subdivisions thereof and all of their departments and instrumentalities all hereinafter called political subdivisions * * *."

A question has been raised in regard to board members who are compensated for on a per diem basis as outlined in chapter 43-09 of the North Dakota Revised Code of 1943, as amended. In reviewing chapter 43-0904 of the North Dakota Revised Code, the law provides for reimbursement of members of the board as follows:

"Each appointive member of the board shall receive five dollars per day for actual services rendered, and in addition thereto, each member shall receive the necessary and actual expenses incurred by him in the discharge of his duties."

You will note that the above quoted section of our law provides that the term "per diem rate" is for actual services rendered. The North Dakota Old Age and Survivor Insurance Law, under section 52-0920, defines employment as:

"The term "employment" means any service performed after June 30, 1947, under an employer employee relationship, under the provisions of this Act."

In view of these two sections of the law it appears that members of the board are performing services in covered employment. Such employment may be exempt, however, under section 52-0920, subsection b (2) of the Old Age and Survivor Insurance Law which provides that earnings of less than \$50.00 in any calendar quarter are not taxable.

The second question has been raised in regard to employees engaged on

a monthly basis, full time. There appears to be no question in regard to the liability of the board for full time employees engaged on a monthly basis.

The third question has been raised in regard to part time employees who receive a flat fee for making inspections of electrical installations. It is noted that the fee is paid directly to the individual who performs the inspection service. In this particular case employment is not a continuing thing and the inspection agreement is a separate contract for each inspection. In view of this, it is my opinion that these individuals perform services on an individual contract basis and therefore are not taxable because an employer employee relationship does not exist.

The fourth question has been raised in regard to electrical inspectors whereby special arrangements have been worked out with the city to have city inspectors make all inspections within the city limits and the fees therefrom are paid to such cities. It appears in this case that the inspectors are, in fact, employees of the city and not of the State Electrical Board. Therefore, employment on a condition set forth in question 4 would not be taxable by the State Electrical Board.

I suggest that on the next payroll you make deductions as indicated in this opinion.

WALLACE E. WARNER

Attorney General