

OPINION
52-8

October 10, 1952 (OPINION)

APPROPRIATIONS

RE: Withholding Payment Old Age Insurance and Retirement Matching

By your letter of October 6, 1952, you have asked the opinion of this office as to the propriety of retaining until after January 1, 1952, twenty-five percent of the item for matching for the Old Age Survivor's Insurance contained in the appropriation for the current biennium of the Livestock Sanitary Board.

You make reference, of course, to section 54-2710 of the N.D.R.C. 1943, which provides:

"Seventy-five percent of the total of all appropriations and of each separate item thereof made by the legislative assembly for the maintenance of any state institution, department, board, commission or bureau for the biennium shall become available on the first day of July next succeeding the enactment by the legislative assembly. The remaining twenty-five percent of any such appropriation shall be available only at the beginning of the fourth quarter of the biennium. No state institution, department, board, commission, or bureau for which an appropriation is made shall disburse more than seventy-five percent of the appropriation during the first eighteen months of the biennium nor incur any expense or liability which shall be discharged from such appropriation or for which such appropriation shall become available. The term "maintenance" shall not apply to nor include moneys appropriated for the payment of the cost of any buildings or equipment or for making improvements and repairs to buildings and grounds, or any other special appropriations exempted from the operation of this section by the act making such appropriation.

The 1951 Legislature, amending the Old Age and Survivor's Insurance Act, which was originally passed in 1947, provided by chapter 297, section 3 of the Session Laws.

"In addition to all other taxes there is hereby levied upon each employer, as defined in section 52-0920, and also upon each employee, as defined in section 52-0920, a tax equal to one and one-half per centum of the wages, to be paid by each employer and each employee . . ."

Related to this provision is section 52-0913 of the original act, as set out in the 1949 Supplement to the 1943 N.D.R.C., which states:

"The taxes deducted from the wages of the employee by the employer shall be matched by the employer making the deduction and shall be forwarded to the Bureau for recording and deposited with the state treasurer to the credit of the Old Age and Survivor's Fund. Such taxes as deducted by the employer

shall be paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the taxpayer, as may be prescribed by the Bureau."

The view which this office has taken in past opinions rendered on section 54-2710 is that the purpose of the statute is to prevent dissipation of the whole appropriation by the party or parties in office during the first three quarters of the biennium, all to the embarrassment of the successor or successors in office who would be required to operate during the last quarter of the biennium without available funds.

This is, of course, not the case in the matter under consideration. The board, being an employer within the meaning of the Old Age and Survivor's Insurance Act, must, by the mandatory language of chapter 297, section 3 of the 1951 Session Laws, and section 52-0913 of the 1949 Supplement to the 1943 Revised Code, pay a set, specific rate matching taxes paid by its employees.

The payment of the money is directory and nothing is left to the discretion of the Livestock Sanitary Board. The purposes of section 43-2710 would not be served by requiring the board to wait until after January 1, 1952, to make a satisfaction of this statutory obligation.

It is, therefore, the opinion of this office that insofar as the specific item for matching Old Age Survivor's Insurance is concerned, the Livestock Sanitary Board is not required under the provisions of section 54-2710 to hold twenty-five percent of the appropriation until after January 1, 1953.

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