

OPINION
59-240

February 5, 1959 (OPINION)

SOCIAL SECURITY

RE: Federal State Agreement - Effective When

This is in reply to a request for an opinion on the following facts:

Your office prepared a number of agreement modifications in connection with Social Security coverage for teachers with effective dates from and between July 1, 1958, and October 1, 1958. These modifications required the approval and signature of the governor. The agreements were submitted to the governor for approval and signature. They were approved and signed by the governor on December 31, 1958, and were immediately forwarded by mail to the Regional Office of the Social Security Administration in Kansas City for approval by the Secretary of Health, Education and Welfare. The modifications arrived at the regional office after January 1, 1959. You then ask for an opinion whether or not the agreements under North Dakota law can be approved as of the year in which the governor signed them rather than the date the agreements reached the regional office.

Section 52-1003 of the 1957 Supplement to the North Dakota Revised Code of 1943 seems to be controlling. Subsection a of this section states that the state agency with the approval of the governor is authorized to enter into an agreement with the Secretary of Health. Subdivision 3 of subsection a of this section provides in part as follows:

"Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services, is entered into,"

The approval referred to therein must relate to the approval of the governor and not the Secretary of Health, Education and Welfare for the reason that the North Dakota Legislature has no control over the Secretary of Health. The governor in giving his approval gives it as to the date he signs it, unless the contents of the modification agreement specifies otherwise. If the date is confirmed or ratified by the secretary at a subsequent date, the date when approved by the governor should control unless federal act or regulations prohibit such. Also "entered into" under the state law refers to the date the governor approved the modification unless the context specifies to the contrary. The governor "entered" into the agreement December 31, 1958, subject to further approval of the secretary. The subsequent approval by the secretary can be considered under state law to be "nunc pro tunc."

It is our opinion that the modification approved and signed by the governor on December 31, 1958, is to be considered, under state law, as having been approved and entered into by the state on said date rather than the date it was received and approved by the Secretary of Health, Education and Welfare. This conclusion is further supported by the fact that the modification was mailed the same day.

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