

**OPINION
59-241**

November 25, 1959 (OPINION)

SOCIAL SECURITY

RE: Public Employees - Contributions - National Guard Civilian Employees

This is in reply to your request for an opinion whether or not contributions or taxes as set forth in subsection d, section 52-1004 as amended in the 1959 legislature are to be paid for National Guard civilian employees.

The section referred to provides as follows:

"In addition to the contributions required in subsection a of this section, every employer shall be required to pay for the period of coverage, into the contribution fund established by section 52-1006, contributions, with respect to wages as defined in section 52-1002, equal to one tenth of one percent after June, 1959. The purpose of this contribution is to provide a fund out of which the Legislature may appropriate for administration of this chapter." (Underscoring ours)

In the Federal Social Security Act as amended in 1954, section 218(b)(5) the following provision is found: (U.S. Code, Eighty-third Congress, Second Session, 1954, Volume 1, page 1250)

". . . . 'Civilian employees of National Guard units of a state who are employed pursuant to section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., section 42), and paid from funds allotted to such units by the Department of Defense, shall for purposes of this section be deemed to be employees of the State and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group.'"

The legislative history relating to this provision states that:

". . . . This provision would establish as a separate coverage group civilian employees of State National Guard units who are employed pursuant to section 90 of the National Defense Act of June 3, 1916 (32 U.S.C. section 42), and paid from funds allotted to such units by the Department of Defense. These employees would also be deemed to be employees of the state. The Department of Defense does not regard these employees as federal employees and has made provision for the payment of the employer's share of the old age and survivors insurance taxes where the state is willing to cover the employees under its agreement

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" (underscoring ours)

The term "separate coverage group" has no legal significance to the question at hand. It merely gives them (National Guard civilian employees) the same stature as any other separate coverage group like the institutions of higher learning, school districts, municipalities. etc. In this connection the term "political subdivisions" as defined in chapter 52-10 merely serves as an aid to determine who can be declared and treated as a separate coverage group. We do not believe that the term "political subdivision" has any legal significance on the question at hand.

The tax is imposed on the employer. The term "employer" as used in the Act is all comprehensive as relating to "public employment." It includes the state and its political subdivisions and their departments and instrumentalities.

The tax referred to applies not only on the employees of the political subdivisions, etc., but also on employees of the state.

Section 52-1004 contains no exemption, nor does it contain any language which will permit an exemption by implication. The term "employer" as found in subsection d has the same meaning and reference as found in the preceding subsections a, b, and c. The federal act has specifically provided that the National Guard civilian employees are deemed to be state employees and the federal government would pay the employer's contribution or tax.

Under the present state statutes we are unable to find any provisions which would expressly or impliedly exempt or exclude the civilian employees of the National Guard, employed pursuant to section 90 of the National Defense Act of 1916, from the tax or contributions as set out in subsection d of section 52-1004.

It is therefore our opinion that the tax or contribution applies to such employees and must be paid.

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