

**OPINION  
60-219**

November 25, 1960            (OPINION)

SOCIAL SECURITY

RE: County Auditor - Contributions by County for Duties Not  
     Involving the County

This is in response to your letter in which you explain that the county officials have concern whether or not the county is required to pay the taxes or contributions arising out of the situation where the County Auditor accepts applications, processes same, transmits them to the State Hail Insurance Department and is reimbursed for such work.

You further bring to your attention that the county is not prepared, nor does it have the finances to pay such taxes. You also bring to our attention a similar provision where the County Auditor performs services for the Game and Fish Department in issuing licenses.

The County Auditor, pursuant to the provisions of chapter 26-22, is designated to accept, process and transmit hail insurance applications to the Hail Insurance Department. For such work the County Auditor is paid from the State Hail Insurance Fund the sum of three-tenths percent of the risk carried on the application for hail insurance coverage reported by him and approved by the Insurance Commissioner.

The Insurance Commissioner certifies to the State Auditor the names of such County Auditors entitled to payment and the amounts due them. The State Auditor then draws a warrant on the State Treasurer for such amounts which are paid from the Hail Insurance Fund.

The county does not contribute in any manner to the payment of the County Auditor, except that the county permits the office to be used for such purposes. This work in connection with hail insurance is in addition to his regular duties and the payment is also in addition to his regular pay. The County Auditor is in this respect employed by two employers. The term "employer" is defined in section 52-0920 (C) (1) of the North Dakota OASIS Act. Under enabling legislation permitting the transfer of coverage under OASIS to the OASI program, the term "employment" is defined by section 52-1002 (b). The term "employer" is also defined in section 52-1002 (i).

The definitions contained in the foregoing sections do not preclude an employee from having more than one employer. Under the definitions and other provisions of the Act, it is permissible for an employee to be employed by more than one employer and make contributions to the Federal Social Security program through different channels. For example, an employee may work for a private employer in which instance contributions, reports, and so on would be made directly to OASI. He may also at the same time be employed by the state or one of its political subdivisions at which time

contributions, reports, and so on would be made to the state agency. The prohibition of an employee having more than one employer would have to be for some other reason and not because of the laws relating to either State Social Security or Federal Social Security.

We are also impressed with the fact that the county makes no contributions to the County Auditor for the services rendered to the Hail Insurance Department. Any contribution, if it can be considered as such, would be the office he occupies and the necessary equipment that goes with such office. For all purposes the County Auditor is employed by the State Hail Insurance Department with reference to the work he performs in relationship thereto and at the same time he is an employee of the county as the County Auditor.

We are also mindful that the duty to withhold the tax or contribution is imposed upon the employer, the person who makes the payment. In this instance it is the Hail Insurance Department.

It is our opinion that the contributions and reports required to be made as a result of the County Auditor performing services for the Hail Insurance Department and receiving remuneration for such services must be made and borne by the State Hail Insurance Department and not the county in which such auditor is located. The same applies to the township assessor where he is remunerated for services rendered to the Hail Insurance Department in connection with accepting applications and transmitting same to the Hail Insurance Department.

It is our further opinion that the same rule applies to the situation where the County Auditor is reimbursed by the Game and Fish Department for issuing licenses, and so forth.

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