

**OPINION
60-223**

November 28, 1960 (OPINION)

SOCIAL SECURITY

RE: Township Supervisors - Fees or Wages

This is in reply to your request for an opinion whether or not the compensation paid to township assessors is considered fees or wages under the agreement with the Federal Social Security program.

The question relates to the compensation that assessors receive for making applications for insurance coverage and submitting them to the Insurance Commissioner.

Under section 26-2216 of the 1957 Supplement to the North Dakota Revised Code of 1943 the assessors are entitled to received three-tenths percent of the risk carried on the application for hail insurance coverage listed and reported by them and approved by the Commissioner of Insurance. The Insurance Department pays the assessor for such services once a year. The payment usually is made sometime shortly after July 20, the last day on which insurance applications can be made.

The township assessor under section 58-0502 is listed as one of the officers to be elected for a civil township. Pursuant to such section he is elected for a term of two years.

Under section 58-0902 of the 1957 Supplement to the North Dakota Revised Code of 1943, the assessor is entitled to receive for his services as assessor a sum not to exceed \$10.00 per day for the time actually and necessarily employed in making and completing the assessments of a township. The assessments by law are made in the month of April and are completed in that month or in unusual cases in the month of May. The services of the township assessor are normally required only for a short time during the second calendar quarter of the calendar year. The amount he is to receive depends solely on the time that he necessarily and actually spends in making and completing the assessments of his township.

The services performed by the township assessor with relation to hail insurance normally are performed during the months of April, May, June and up to July 20, more generally in June and July. The compensation received by the township assessor for his services in connection with hail insurance is on a statutory basis.

Under subsection C of section 52-1002 of the 1957 Supplement to the 1943 Code pertaining to public employees under Federal Social Security, which is referred to as enabling legislation permitting state employees to come under Federal Social Security, it is provided that:

The term 'employee' includes an officer of a state or political subdivision as well as all persons employed in and by

regulatory boards, commissions or councils recognized and established by the statutes of the state of North Dakota, except part-time elected persons or persons hired on a fee basis, if excluded by the federal-state agreement " (Emphasis supplied.)

Modification 79 amending modification 37 excludes services in an elective part-time position and services for compensation which is on a fee basis. This modification agreement is in accordance with state statutes. The term "part-time elective position" is an elective position for which ordinarily the compensation for services is at the rate less than \$50.00 a quarter in at least three quarters of a calendar year.

The township assessor is a part-time elected officer and holds a part-time elected position. The compensation received by the assessor for the services rendered may in one sense be considered salary or wages, and in another sense a fee. However, in view of the administrative definition of a part-time elective position the question whether the compensation is a fee or salary need not be resolved. The elective part-time position as defined by administrative rule would control. If the assessor were performing only services as an assessor and were paid for such services, he would in all probability be excluded under administrative definition. However, the assessor receives additional compensation from the Hail Insurance Department where he performs services for the Hail Insurance Department. His relationship arises out of the fact that he is a township assessor. It is the position he holds that brings about the relationship.

In this respect I believe we must consider the entire remuneration or compensation received by the assessor, both for the services as township assessor and for services for the Hail Insurance Department. In doing so, it is observed that he can or may receive compensation of \$50.00 or more in two calendar quarters or a calendar year. As such, the administrative definition of a part-time elective position would prevail. Under this definition he would no longer be excluded.

We must also remember the purpose of the Social Security program and the enabling legislation permitting full participation thereunder.

It is, therefore, our opinion that the remuneration received by the township assessor constitutes salary or wages for Social Security purposes. From this conclusion it necessarily follows that the proper deduction or withholding must be made by Hail Insurance Department for such wages and that the same be transmitted and reported to the state agency.

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