

**OPINION
61-221**

October 27, 1961 (OPINION)

SOCIAL SECURITY

RE: Soil Conservation Districts - Contributions

This is in reply to your letter in which you state that a question has arisen in regard to the liability of soil conservation districts for the payment of contributions which are required by chapter 52-09 of the North Dakota Century Code and the contribution payments and wage reports required by chapter 52-10 of the North Dakota Century Code.

You advise that the North Dakota Old Age and Survivors Insurance System has required soil conservation districts to file wage and contribution reports for the period July 1, 1947 through December 31, 1957. Since July 1, 1957, the agency has required the filing of contribution reports and payments.

You also call to our attention that the soil conservation districts do not have authority to levy taxes. You then ask for an opinion whether or not the soil conservation districts created by chapter 4-22 of the North Dakota Century Code are subject to the provisions of the OASIS and Social Security programs and are required to pay the contributions as required under such programs and file the appropriate reports.

In answering your question we will take into account the fact that the OASIS program was in effect for a number of years, and pursuant to federal and state legislation the program was converted and made part of the Social Security program. There appears to be little doubt that soil conservation districts created under chapter 4-22 of the North Dakota Century Code were required to participate in the OASIS program.

The definition of employer is found in subsection c (1) of section 52-09-20. The definition is as follows:

The term 'employer' means the state of North Dakota, the counties, municipalities, and all of the political subdivisions thereof and all of their departments and instrumentalities all hereinafter called political subdivisions excepting only those whose employees are now or may hereafter be covered by a retirement plan in which event such political subdivision may by election come under the provisions of this chapter in accordance with the regulations prescribed by the bureau."

This definition has been in effect as pertaining to the OASIS program from its inception.

We also note under chapter 52-10, which is the enabling legislation permitting the OASIS program to be transferred to Federal Social Security, that the term "political subdivision" is defined, (section

52-10-02, subsection f), to include:

. . . . an instrumentality of a state, of one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions;".

This definition was enacted and designed to set up categories within the employee group for purpose of transferring coverage from the state OASIS program, and also for purpose of permitting participation in the Federal Social Security program. It was also designed to distinguish between state departments such as Unemployment Compensation Division, Workmen's Compensation Bureau, Health Department, etc., (part of executive branch of government) and political subdivisions. This definition was also designed to assist in carrying out referendums and other prerequisites to the transfer or participation in Federal Social Security.

What appears to be somewhat impressive is the definition of an employee found under section 52-10-02, subsection c, which provides:

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;"

The term "employee" in this instance was actually enlarged to bring in every employee who is employed by some organization which has some standing as a political subdivision. You will notice that this definition brought employees of regulatory boards or commissions or councils within the term "employee." This definition, of course, must be read in connection with subsection f which defines "political subdivision."

Now, as to the soil conservation districts which were created under chapter 4-22 of the North Dakota Century Code, we find a specific provision relating to them in section 4-22-13 which provides that:

Upon the certification by the committee to the secretary of state as provided in section 4-22-12, the district shall become a governmental subdivision of the state and a body corporate and politic. . . ." (Emphasis supplied).

Construing the aforementioned statutes together, we come to the apparent conclusion that a soil conservation district is a political subdivision for purpose of OASIS and Social Security. Where the statute specifically so designates, it is difficult to avoid any other construction. We were unable to find any statutes which either by inference or otherwise limit the definitions of a political subdivision to such bodies which are authorized to levy taxes. While in some instances the power of levying taxes was used as an extrinsic aid in determining whether a certain body was a political subdivisions, it is not controlling.

We are impressed with the fact that nowhere throughout the OASIS Act or chapter 52-10, or for that matter the Federal Social Security Act, that an employer must be a person or body authorized by law to levy such a tax. Such condition is not embodied with any of the definitions with which we are concerned.

We are also aware that the transfer from OASIS to Federal Social Security was accomplished upon providing funds for those employees who had already retired or to whom the OASIS Fund had become liable for payments. As a condition to such transfer and in recognition of obligations incurred, the Legislature imposed certain taxes upon employers. This was merely one method of raising the revenues. The finances necessary to meet the incurred liability could have been raised by several other means, but apparently the Legislature chose to levy a tax on certain employers.

It is, therefore, our opinion that soil conservation districts created under chapter 4-22 of the North Dakota Century Code are political subdivisions as contemplated by both chapters 52-09 and 52-10, and if they have employees, they are considered employers for purpose of paying the tax referred to and are required to submit the reports required under the aforementioned provisions of law.

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