



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 18, 1976

ATTORNEY GENERAL OPINION NO. 76-97

Mr. Robert Stover
City Attorney
214 Mills Building
Post Office Box 732
McPherson, Kansas 67460

Re: Cities--Officers--Social Security

Synopsis: Members of the McPherson, Kansas, Board of Public Utilities are officers of the city, and are therefore employees as that term is defined by K.S.A. 1975 Supp. 40-2302(c), for whom the city must make Social Security contributions.

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Dear Mr. Stover:

You inquire concerning the liability of the City of McPherson for Social Security contributions respecting the salaries of members of the Board of Public Utilities of that city. You advise that the Board was created by charter ordinance in 1969, for the management of its water and electric utilities. The Board is composed of three members, who are appointed by the city governing body. The charter ordinance also provides for a general manager of the utilities, who is responsible to the Board. You also indicate that several years ago, the City of McPherson elected on behalf of employees for coverage under K.S.A. 40-2301 *et seq.*

K.S.A. 1975 Supp. 40-2302(c) defines the term "employee" thus:

"[T]he term 'employee' includes an officer of the state or political subdivision

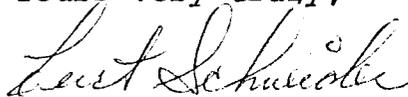
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thereof; Provided, That the term 'employee' shall not include elected officials of a political subdivision other than the state or counties unless the elected officials of such political subdivisions are covered by a plan which is in conformity with the terms of the agreement of such political subdivision approved by the state agency under K.S.A. 40-2305" [Emphasis supplied.]

You indicate that it has been the position of the city that the members of the Board of Public Utilities are in a position analogous to the directors of a corporation, and that no liability should attach to the city for contributions respecting their salaries.

It appears that under the charter ordinance, the municipal utility operations, electricity and water, are placed under the legal control and jurisdiction of the Board of Public Utilities, which is vested with sole legal responsibility therefor, subject, of course, to the appointment of its members by the city governing body. Thus, in net effect, the board wields the sovereign power of the city for and in behalf of the management of its utilities, and the members of the Board are public officers of the city. As such, they constitute "employees" as that term is defined by K.S.A. 1975 Supp. 40-2302(c), and the city is liable for Social Security contributions respecting their salaries.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj