



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 11, 1977

ATTORNEY GENERAL OPINION NO. 77-112

Mr. Michael J. Hines
Attorney at Law
607 Market
Osage City, Kansas 66523

Re: Cities--Officers--Social Security Benefits

Synopsis: The compensation prescribed by city ordinance to be paid to the city attorney, which includes both a monthly retainer and an hourly rate of compensation, is subject to withholding for Social Security benefits under K.S.A. 1976 Supp. 40-2302 *et seq.*

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Dear Mr. Hines:

You inquire whether compensation paid to the city attorney of the City of Osage City, Kansas, pursuant to Ordinance No. 1008 of that city is subject to withholding for Social Security benefits pursuant to K.S.A. 1976 Supp. 40-2302 *et seq.*

Section V of that ordinance provides that the city attorney shall receive a monthly retainer of \$120.00, which provides for appearances at meetings of the city council and zoning board, and in municipal court. For other services performed on behalf of the city, he shall receive \$30.00 per hour.

K.S.A. 1976 Supp. 40-2302(c) defines the term "employee" to include "an officer of the state or political subdivision thereof." The city attorney is an officer of the city. K.S.A. 14-201. K.S.A. 1976 Supp. 40-2302(a) defines the term "wages" to include "all remuneration for employment as defined herein" Thus, the term includes all remuneration prescribed by ordinance to be paid to a city attorney for his or her services which are

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rendered in that capacity. In *Johnson v. City of Winfield*, 75 Kan. 832, 89 Pac. 659 (1907), the court held that the compensation of the city attorney must be fixed by ordinance. Ordinance No. 1008 does just that, and the term "wages" as defined in the cited statute includes, in my judgment, all remuneration which is prescribed by that ordinance to be paid to the city attorney for his services in that capacity. The definition of "wages" does not exclude remuneration which is computed on an hourly basis, or compensation which is paid to a municipal officer for professional services rendered in the capacity as such officer. It does not exclude remuneration which is paid in the form of fees, which are paid as provided by city ordinance to a city officer for his services as such city officer. K.S.A. 1976 Supp. 40-2302(b) provides in pertinent part thus:

"the term 'employment' means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (3) service in any class or classes of positions, the compensation for which is on a fee basis."

Section V of the ordinance provides that the compensation to the city attorneys shall include the monthly retainer, and an hourly billing. Hourly remuneration is not exempted from the term "wages" in my judgment merely because it is treated by the parties as a fee method of compensation. It is difficult to characterize the \$30 rate of compensation as a fee, when it is the compensation prescribed by municipal ordinance for compensation. The \$30 per-hour is not, in this instance, the fee fixed by the city attorney, but the compensation prescribed by law, i.e., by municipal ordinance, to be paid for services rendered the city.

Accordingly, it is my opinion that the compensation provided by section V of Ordinance No. 1008 to be paid to the city attorney of the City of Osage City, Kansas, is subject to withholding for Social Security benefits.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj