



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 14, 1977

ATTORNEY GENERAL OPINION NO. 77- 388

Mr. Joseph E. Cole
Geary County Counselor
Post Office Box 62
Junction City, Kansas 66441

Re: Counties--Social Security--Coroners

Synopsis: District coroners are state officers, whose fees, expenses and salaries are paid by the county. District coroners are thus "employees" as defined at K.S.A. 1976 Supp. 40-2302(c) respecting whom OASI withholding must be made.

* * *

Dear Mr. Cole:

You inquire whether the district coroner is to be considered an officer or employee of the county, and whether the compensation of that officer is subject to Social Security withholding.

The office of district coroner is established by K.S.A. 19-1026, to be filled by appointment by the district judge or judges. In an opinion dated January 27, 1965, to John K. Corkhill, executive secretary of the Kansas Public Employee Retirement System, Attorney General Robert Londerholm concluded that the district coroner was a state officer, performing largely nonjudicial duties throughout the judicial district of his or her jurisdiction, and should therefor be treated for retirement purposes as an employee of the State of Kansas. However, he pointed out that responsibility for withholding deductions for the employee's retirement contribution, and for payment of the employer's contribution respecting the coroner, rested with the counties.

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You question this opinion as "archaic" and "very much outdated," and question whether any OASI withholding is due whatever regarding either the coroner or pro tem county judges prior to court unification.

K.S.A. 1976 Supp. 40-2302(c) defines the term "employee" for the purposes of Old Age and Survivors' Insurance benefits which are extended to state and local officers and employees thereunder. It states thus:

"the term 'employee' includes an officer
of the state or political subdivision thereof
. . . ."

I see no basis upon which to disagree with the 1965 opinion of Attorney General Londerholm. A coroner exercises quasi-judicial powers and perhaps, in limited circumstances, strictly judicial authority. The coroner is appointed by the district judge or judges, and serves throughout the judicial district. The coroner is equally a state officer as is the district judge, in my opinion, and I believe General Londerholm's analysis to be entirely correct. Notwithstanding the district coroner, and deputy district coroners, wield the judicial and quasi-judicial power of the state, and are for that purpose state officers, the county is required by K.S.A. 19-1028 to pay the annual salaries, fees and expenses of such officers, and is thus obligated to make such withholding or assume responsibility therefor as though the coroner were an employee of the county. The fact that the coroner may be paid on a fee basis does not alter his or her status as an "employee" as that term is defined by K.S.A. 1976 Supp. 40-2302(c), and hence, the responsibility of the county for OASI withholdings respecting any compensation paid to the coroner, whether paid a per annum salary or by fees for services rendered. You advise that the present coroner has heretofore reported compensation received for his services as coroner as self-employment income, and paid the self-employed social security tax thereon. Under K.S.A. 19-1027, district coroners are to receive an annual salary as prescribed therein. Any compensation received by the district coroner, whether on a per annum basis paid monthly, or as a fee for services rendered, is compensation paid to him for holding the office of coroner and for providing the services which the office entails, and constitutes compensation paid to an "employee" as that term is defined in the provision cited above, respecting which OASI contributions are required to be withheld.

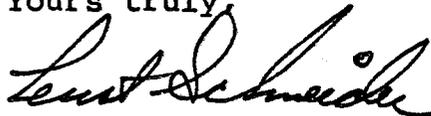
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Thus, in my opinion the district coroner must be considered an employee of the county, and OASI withholding requirements must be applied to any compensation paid to him for his services, including fees paid for which claims are filed on a monthly basis.

Secondly, you ask whether Social Security contributions be retroactively assessed to the coroner for past services to the county, as stated above. In my judgment, such assessment should be made, as requested and required by the Division of Accounts and Reports of the Department of Administration, for the reasons stated above.

Lastly, you ask whether the judge pro tem of the county court should be required to pay to the county monies due representing amounts which should have been withheld from his or her compensation paid to the judge for services rendered in that position. In Opinion No. 77-90, we discussed the question whether judges pro tem of the Court of Common Pleas were subject to OASI withholding requirements. The discussion in that opinion, as well as that offered above concerning district coroners, applies equally to judges pro tem who sat in county court, prior to unification of the courts by legislation in 1976. They are equally officers of the county, and thus "employees" within the statutory definition given above, who are responsible to pay to the county any amounts which were erroneously not withheld but which should have been withheld. As you indicate, the county may be liable for the entire amounts involved, in view of the refusal of the individuals involved to make the required payments to the county.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj