



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER  
ATTORNEY GENERAL

October 25, 1978

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78-346

Mr. W. Keith Weltmer  
Secretary of Administration  
Department of Administration  
2nd Floor - State Capitol  
Topeka, Kansas 66612

Re: Counties--Social Security--Deputy District Coroners

Synopsis: Deputy district coroners, excepting first deputy district coroners in counties with a population in excess of 140,000 and less than 220,000, and excepting any other deputy district coroners who are paid a per annum salary, whose compensation for their services in that capacity is derived solely from the fee of \$35 for each examination of a dead body as prescribed by K.S.A. 19-1028 are excluded from Social Security coverage under the Section 218 agreement of the State of Kansas with the Secretary of the U.S. Department of Health, Education and Welfare and under K.S.A. 1977 Supp. 40-2302(b) (3).

\* \* \*

Dear Secretary Weltmer:

You inquire whether deputy district coroners are included within the class of employees who are excluded from Social Security coverage under the agreement between the State of Kansas and the U.S. Department of Health, Education and Welfare and under K.S.A. 1977 Supp. 40-2302(b) (3).

As you point out, K.S.A. 19-1027 provides that district coroners receive an annual salary which "shall be in lieu of any fees for examination of dead bodies." However, deputy district coroners

Mr. W. Keith Weltmer  
Page Two  
October 25, 1978

receive a fixed fee for each body examined, except in counties with a population of more than 140,000 and less than 220,000, where one or more deputies also receive a salary. K.S.A. 19-1028.

In Opinion No. 77-388, we considered the issue whether a "district coroner is to be considered an officer or employee of the county, and whether the compensation of that office is subject to Social Security withholding." We concluded that district coroners were county officers, and that their compensation was therefore subject to Social Security withholding. That opinion did not specifically address deputy district coroners, as distinguished from district coroners themselves, and you request that we consider this issue specifically.

You point out that Section 209 of the Social Security Act defines wages as "remuneration paid," and list various payments which are not considered to be wages. 42 U.S.C. § 409(g). Fees are not listed as excluded from wages. However, under section 218 of that Act, a state has the option to exclude "fee base positions" from Social Security coverage. 42 U.S.C. § 218(c)(3)(A)(iii). In its agreement with the Secretary of Health, Education and Welfare under section 218, the State of Kansas has exercised its option to exclude from state employment, for Social Security purposes, "services in positions, the compensation for which is on a fee basis." K.S.A. 1977 Supp. 40-2302(a) provides in pertinent part thus:

"[T]he 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 . . . ." [Emphasis supplied.]

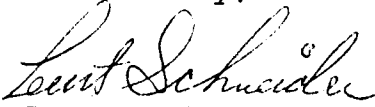
You advise that according to Mr. Granger, Assistant Regional Attorney for the Department of Health, Education and Welfare, Region VII, section 130 of the *Handbook for State Social Security Administrators* states that the issue whether compensation which is paid to an officer or employee is a "fee" is to be determined by State law. Section 233 of the Handbook states that there are no federal definitions of the optional exclusions.

Mr. W. Keith Weltmer  
Page Three  
October 25, 1978

Accordingly, you ask whether Opinion No. 77-388 applies to deputy district coroners as well as to district coroners. The opinion applies to district coroners and to deputy district coroners in those certain counties who receive an annual salary under K.S.A. 19-1028. It should not be construed as applying to deputy district coroners whose compensation is derived solely from the fee of \$35 for each examination of a dead body as provided in K.S.A. 19-1028.

You ask whether deputy district coroners who receive what is called a "fee" under K.S.A. 19-1028 are included within the class of employees who are excluded from Social Security coverage as provided in the State's section 218 agreement and in K.S.A. 1977 Supp. 40-2302(b)(3). In my judgment, they are excluded. The sum of \$35 for each examination is specifically denominated a fee in K.S.A. 19-1028, and it cannot fairly be regarded otherwise. The compensation of deputy district coroners, excepting the first deputy district coroners in counties having a population of more than 140,000 and less than 220,000, which is derived entirely from the fees described above do fall within the class of employees who are excluded from Social Security coverage under the Section 218 agreement of the State, and under K.S.A. 1977 Supp. 40-2302(b)(3).

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj