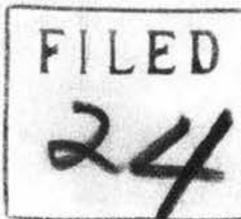


SOCIAL SECURITY:
SOCIAL WELFARE BOARDS:

Employees of social welfare boards are not employees of the city or county. A social welfare board is an instrumentality and its employees may be covered under the Old Age and Survivors Insurance provisions of Title 2 of the Federal Social Security Act only by an agreement entered into between the state agency and the social welfare board of the county.
April 4, 1952



Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

4-11-52

Dear Sir:

This is with further reference to your letter requesting an opinion, which reads as follows:

"We have been requested to ask your office for an opinion with reference to the Social Welfare Board of the County of Buchanan, which was created and established pursuant to Sections 205.770 through 205.840 of the Revised Statutes of Missouri, 1949.

"The question arises as to whether or not the employees of the Social Welfare Board are employees of the County, or whether the Social Welfare Board is a juristic entity similar to the Farm Bureau.

"The Social Welfare Board consists of eight members. As I understand it, the City of St. Joseph contributes \$35,000.00 or \$40,000.00, and the County contributes \$28,000.00 for the program. The eight members are appointed by both the County and City. The Board has exclusive control over the distribution and expenditures of donations and public funds appropriated to it. It also has the power to sue or be sued, and has exclusive control over the employees of the Board. It pays its employees out of funds appropriated to the Board.

Honorable John E. Downs

"Would you please send this office an opinion as to whether or not the employees of the Social Welfare Board are County employees under the provisions of Senate Bill No. 3, or whether or not the Social Welfare Board is an instrumentality as defined in Senate Bill No. 3, entitling the employees to come under the act by an agreement entered into directly with the State."

It is noted that you have outlined the power of the Social Welfare Board of the County of Buchanan in your letter. We have noted in Sections 205.770 and 205.840, RSMo 1949, that the board referred to has among its powers the power to receive and expend donations for social welfare purposes; has exclusive control over the distribution and expenditure of any public funds, appropriated; has power to promote the general welfare of the board; to sue and be sued, complain and defend; assume the care of and take by gift, grant, devise, bequest or otherwise, any money, real estate, personal property, or other valuable things, and may use, enjoy, control, sell or convey the same for charitable purposes; and to have and use a common seal and alter the same at pleasure. It is further allowed to make by-laws for its own guidance, rules and regulations for the government of its agents, servants and employees, and for the distribution of funds under its control.

The board is given additional powers to those above mentioned in Section 205.780, RSMo 1949. Section 205.790, RSMo 1949, provides for the members of the board, their appointment, tenure and compensation, together with the method of filling vacancies. This same section provides that the board shall be nonpartisan and nonsectarian. It makes the mayor of the city and the presiding judge of the county, ex-officio members of the board and provides for three members from the city and three members from the county. Their tenure of office is staggered so that a county member and a city member has his term expiring each year. Section 205.800, RSMo 1949, provides for the organization of the board and that its members elect a president, vice-president, treasurer and secretary. Section 205.810, RSMo 1949, provides that all monies received or appropriated for the use of the board shall be deposited with the treasurer. It is obvious from the law providing for the board and its activities that their employees are the employees

Honorable John E. Downs

of the board paid out of the treasury of the board. They are neither county nor city employees, the city and county, under the dictates of the statute, having lost control over them. Neither the city nor the county pay them.

However, since they are distinctly governmental employees in a distinctly governmental function, they are definitely covered by the provisions of Senate Bill No. 3. In the opinion of Mr. Donal D. Guffey of this office, a copy of which is enclosed, written October 25, 1951, in regard to the county farm bureaus, an instrumentality under the provisions of Senate Bill No. 3 was defined. As it was defined in that opinion in regard to a county farm bureau, it is equally true in regard to the social welfare board of Buchanan County. That, although it is not completely separate and distinct from the city, county or state, from two of which it is likely to receive the major portion of its compensation, it is still legally separate and distinct from the above governmental organizations.

In Senate Bill No. 3 of the 66th General Assembly, Section 1, Subsection (6), defines the term "Instrumentality" as follows:

"'Instrumentality', an instrumentality of a state or 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 such political subdivision and whose employees are not by virtue of their relation to such juristic entity employees of the state or such subdivision;"

We believe that the social welfare board of the County of Buchanan comes within the terms of the above definition.

CONCLUSION

It is therefore the opinion of this department that the employees of the social welfare board of the County of Buchanan are not employees of the City of St. Joseph or of the County of Buchanan. We are further of the opinion that the social welfare

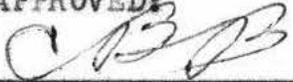
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board of the County of Buchanan is an instrumentality as defined by the act and that its employees may be covered under the Old Age and Survivors Insurance provisions of Title 2 of the Federal Social Security Act only by an agreement entered into between the state agency and the social welfare board of the County of Buchanan.

Respectfully submitted,

JAMES W. FARIS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JWfab

Enclosure.