

SOCIAL SECURITY:  
OFFICIAL COURT REPORTER:

*Circuit*

~~An official~~ court reporter for the purpose of the Social Security Law is an employee of the county or counties from whom he derives his compensation.

August 28, 1951

8-29-51

Honorable H. K. Stumberg  
Prosecuting Attorney of  
St. Charles County  
St. Charles County, Missouri



Dear Sir:

Reference is made to your recent request for an official opinion of this department which request reads as follows:

"I would like very much to have an official opinion from your office on the following questions:

- "1. Is the Official Court Reporter considered a state officer within the meaning of the law relative to social security?
- "2. Where the court reporter's circuit comprises more than one county, does each of the several counties have to accept the Act before he can qualify with the government under the Act?
- "3. Would the answer to No. 2 be any different if any one county failed to comply where the others did, i.e.,
- "4. Would the total monthly withheld payments be reduced because of the failure of one county to accept the Act and, if so, would the proportionate part of his salary derived from the county which did not accept the Act be the determining factor?"

Your questions require an interpretation of Senate Committee Substitute for Senate Bill No. 3 of the Sixty-Sixth General

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Assembly with regard to the status of an official court reporter. You first inquire whether the official court reporter is a state officer within the meaning of this act. Section 2, subsection 3, of Senate Bill No. 3 provides for the coverage of state employees as follows:

"All services which constitute employment as defined in section 1 and are performed in the employ of the state by employees of the state shall be covered by the agreement."

(Underscoring ours.)

The term employee is defined in Section 1, subsection 2 to include state officers as follows:

"'Employee', elective or appointive officers and employees of the state, including members of the general assembly, \* \* \*."

(Underscoring ours.)

The term state officer is not defined in Senate Bill No. 3, therefore we must look to the generally accepted rules for determining who is a state officer so far as they are consistent with the purposes of the act.

In the case of State ex rel. Scobee v. Meriwether, 200 S. W. (2d) 340, the Supreme Court of Missouri was called upon to decide whether an official court reporter was a public officer within the meaning of Article VII, Section 13 of the 1945 Constitution of Missouri. In discussing this question the court in its opinion said:

"'It is not possible to define the words "public office or public officer." The cases are determined from the particular facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision.' State ex inf. McKittrick, Attorney General, v. Bode, 342 Mo. 162, 113 S.W. (2d) 805, loc. cit. 806."

The court, after extensive review of the statutes relating to official court reporters considered in connection with the usual rules for determining who is a public officer, reached the following conclusion:

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"When the various elements of a public office and the characteristics of a public officer are considered in connection with our statutes dealing with an official court reporter, he is not a public officer but an employee \* \* \*."

(Underscoring ours.)

We believe that nothing in the provisions of Senate Bill No. 3 would constrain us to hold that an official court reporter is a state public officer notwithstanding the reasoning applied in the above cited case. Therefore, we are of the opinion that an official court reporter is not a state officer within the provisions of Senate Bill No. 3 and covered as such; however, this conclusion does not preclude an official court reporter from being covered as an employee, either of the state or of a county or counties.

Section 485.040, RSMo 1949, provides for the appointment of official court reporters by the judges of the circuit courts. Section 485.050 prescribes the duties of duly appointed court reporters. Section 485.060 provides for the compensation and method of payment of such reporters in judicial circuits having a population of 45,000 and less than 60,000 inhabitants and reads in part as follows:

"\* \* \* where a judicial circuit is composed of more than one county, such salary shall be divided among the counties and be paid by them proportional as the population of such counties bears to the entire population of the circuit; \* \* \*."

We are of the opinion under the authority of State ex rel. Scobee v. Meriwether; the above cited section, and a consideration of Senate Bill No. 3, that an official court reporter is an employee of the county or counties by whom his compensation is paid, for the purpose of this act.

In the case of Shamburger et al. v. Commonwealth et al., 240 SW (2d) 636, the Court of Appeals of Kentucky was called upon to decide whether certain officers, i. e. (sheriff, clerk of the county court, clerk of the circuit court, etc.), their deputies and assistants, who were receiving their compensation from the state, were employees, for the purpose of the Social Security Act, of the state or county. The court in reaching its decision disregarded the usual rules for determining the employer-employee relationship and based their decision upon the source of compensation, and said:

"The Social Security Act contemplates an employer-employee relation. Strictly speaking

that is not the relation between a government and its elected officer. But for purposes of the Social Security Act, 'The term "employee" includes an officer of a State or political subdivision.' 42 U.S.C.A., Section 418(b) (3). By Ch. 1, Sec. 2(c), acts of 1951, Extraordinary Session, the term is deemed to include both 'elective and appointive officers of the Commonwealth, political subdivisions, or interstate instrumentalities.' This observation is made in the light of argument as to whether the state or the county has control over these officers, and some statement about the right to 'hire and fire,' which is often regarded as establishing the employer-employee relationship. There is some complication in the fact that the officers to which the present controversy relates render dual or triple services--to the Commonwealth, to the county, and to individuals who may or may not be citizens of either the state or county, and collect fees from all of them.

"The fundamental point, it seems to us, is the fact that contributions (or excise taxes) required by the law to be paid by both employers and employees, is a percentage of wages or compensation paid and received. 26 U. S. C.A., Sections 1400, 1410. Therefore, so far as liability for payment is concerned, the controlling point is the source of compensation, i.e., who pays the salaries."

(Underscoring ours.)

Therefore, for the purpose of Senate Bill No. 3, an official court reporter would be considered an employee of each county from whom he derives compensation and would qualify for coverage when the county accepted the provisions of Senate Bill No. 3 and enters into an agreement covering its officers and employees.

We do not deem it necessary to pass upon questions 2, 3 and 4, since the three counties comprising your judicial circuit have accepted the provisions of Senate Bill No. 3.

#### Conclusion

Therefore it is the opinion of this department that for the purpose of coverage under the Social Security law, an official court reporter of a judicial circuit comprised of three counties is an employee of each county to the extent that such county

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contributes to his compensation.

Respectfully submitted,

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APPROVED:

  

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