

OFFICIAL OPINION NO. 77-41, Social Security coverage for planning and development districts

May 5, 1977

Mr. Jerald M. McNeary
Brown County State's Attorney
Brown County Courthouse Building
Aberdeen, South Dakota 57401

Official Opinion No. 77-41

Social Security coverage for planning and development districts

Dear Mr. McNeary:

You have requested an opinion based on the following factual situation:

FACTS:

The State of South Dakota has six planning and development districts established by the Governor. Each of the six districts is then formed by a joint cooperative agreement entered into by several public agencies (specifically counties and cities) pursuant to SDCL 1-24. Their prime purposes are to foster intergovernmental cooperation and to supply various planning services for member units (who contribute to their budget) and to serve as a conduit for distributing Federal Grants-in-aid to member governmental units. They have no real legislative or taxing authority. Normally, they have the power to contract with consultants, the power to rent office space and purchase equipment, and to apply for, receive and expend grants of funds from local, state and federal governments.

During the last four years, District IV has "Piggy Backed" on Brown County for purposes of Federal employer number, payroll, FICA taxes, etc. Since the District audit of November, 1976, the District has expressed concern about their qualifications for Social Security coverage, in view of SDCL 3-11 and particularly 3-11-2(7) and (3).

Based on the above factual situation, you ask the following questions:

QUESTIONS:

1. Does the District IV organization qualify for coverage under Section 218 of the Federal Social Security Act?
2. If it does qualify, are they reporting properly, by "Piggy Backing" on a member city or county?
3. If they do not qualify, what steps need to be taken by them, so that they might properly qualify?

IN RE QUESTION NO. 1:

In summary, Section 218 of the Federal Social Security Act authorizes the federal government and any state to enter into an agreement extending the federal Social Security program to employees of the state and political subdivisions thereof. 42 USCA § 418(a)(1). By definition, a political subdivision includes "an instrumentality of a state or of one or more political subdivisions of a state." § 418(b)(2).

The legislation authorizing South Dakota to so contract is found in SDCL 3-11-5. A "political subdivision" is defined as "a subdivision of the state to which has been delegated certain powers of local government, but only if the employees of such subdivision are not by virtue of their relation to such subdivision, employees of the state or another subdivision;" SDCL 3-11-3(7).

The problem is, of course, that a planning and development district is something of a hybrid. Pursuant to the Joint Powers Act (SDCL 1-24), two or more statutorily recognized political subdivisions may contract with each other to jointly provide authorized services. The participating political subdivisions are further authorized to create an "administrative entity" to carry out the joint venture, SDCL 1-24-4(2). The powers and functions of the administrative entity are totally limited by the terms of the joint agreement. Therefore, since a planning and development district is such an administrative entity created by political subdivisions, as opposed to a political subdivision created by law, the issue is whether the definitional language of 42 USCA § 418(b)(2) and SDCL 3-11-3(7) is broad enough to provide coverage for its employees.

In my opinion, the employees of District IV are eligible for Social Security coverage pursuant to the above-cited statutes. Although District IV is not a "political subdivision," it is definitely an entity and an instrumentality. There is no question but that the South Dakota Legislature could have taken care of the problem by specifically including planning and development district employees in the definition of "employee," SDCL 3-11-2(3) such as it did for Municipal League employees. However, the distinctions between the two organizations are obvious and are not relevant here. The most important and determinative factor is that the employees of District IV are public employees whose wages are paid by participating political subdivisions. The very definition of political subdivisions in SDCL 3-11-2(7) implies that the providing of Social Security coverage for public sector employees, who would not otherwise be eligible for coverage, is the paramount purpose of the act.

The answer to your first question is yes. The employees of District IV qualify for Social Security coverage under Section 218 and SDCL 3-11 provided an agreement for such coverage has been entered into by the authorized representatives of the federal government and the State of South Dakota.

IN RE QUESTION NO. 2:

If I understand your use of the term "Piggy Backing" correctly, Brown County is acting as the reporting political subdivision for the total wages of all District IV employees even though a number of other political subdivisions contribute. In my opinion, this is a proper method of reporting provided all other reporting regulations adopted by the Social Security Administration and the director of the South Dakota OASI are complied with. (In this regard, I am enclosing a photocopy of a January, 1977, letter from the Social Security Administration further elaborating on some of the requirements.)

Until such time as the South Dakota Legislature grants political subdivision status to planning and development districts, they are not eligible to receive an identification number and report directly to the State. In the meantime, they must report as part of an existing coverage group.

The answer to your second question is yes.

IN RE QUESTION NO. 3:

In view of my answer to your first question, I find it unnecessary to reply to this question.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:LLV:pk

Enclosure