

Opinion No. 55-6299

October 14, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: John C. Hays, Administrator, Social Security Division, Public Employees Retirement Association, Post Office Box 2237, Santa Fe, New Mexico. Attention: Charles C. Staab, Administrative Assistant

We have your letter of August 17, 1955, in which you requested an opinion from this office as to whether the district attorneys, district court clerks and probation officers were to be excluded from a county coverage group under the Old-Age and Survivors Insurance System.

District attorneys are State officers. The district is not a political entity. The case of State ex rel Ward vs. Romero, 17 NM 88, 125 P. 617, holds that a district attorney is a State officer, as does the case of State ex rel Prince vs. Rogers, 57 NM 686, 262 P. 2d 779. It is true that contributions are made from the district court funds which, in turn, are made up by various counties within each respective district. However, the district attorneys' salaries are paid by the State. Therefore, it is the opinion of this office that the position of a district attorney should not be included in county coverage groups.

A district court clerk, even though employed by a district judge for district court duties exclusively, is a county employee. The district is not a political entity. State ex rel Prince vs. Rogers, supra; State ex rel Ward vs. Romero, supra. The court fund is a county fund and, as such, all salaries paid out of that fund are to county employees. Therefore, we are of the opinion that such a position should not be excluded from the county coverage group.

For the question concerning a probation officer, we are enclosing a copy of Opinion No. 6291, in which it is held that a probation officer is a county employee.

For the reasons stated above concerning district court clerks and probation officers, the positions should be included in county coverage groups. However, as for the district attorney, he is a State officer and such position should not be included in county coverage groups.

We sincerely hope that we have answered your inquiry.

By Fred M. Standley

Assistant Attorney General