

Opinion No. 61-50

June 20, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S Thayer, Assistant Attorney General

TO: Mr. Charles C. Staab, Director, Social Security Division, Public Employees Retirement Association, 403 Don Gaspar, Santa Fe, New Mexico

QUESTION

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If the Federal-State Social Security Agreement is amended to extend coverage to persons compensated on a fee basis, should Justices of the Peace be included in the state coverage group or in the county coverage group of their county?

CONCLUSION

The county.

OPINION

ANALYSIS

At the beginning, we should point out that a Justice of the Peace, even though he is an elected officer, is considered an employee for social security purposes under Section 5-7-2 (b) and (c), N.M.S.A., 1953 Compilation.

In the case of **Territory v. Witt**, 16, N.M. 335, 117 Pac. 860 (1911), it was decided that a Justice of the Peace is a precinct officer, not a county officer. The Court also said:

"It was also unquestioned that in New Mexico a precinct has no corporate existence, but is a mere political subdivision of the county."

The term "political subdivision" has special meaning under our Social Security law. Section 5-7-2 (f), N.M.S.A., 1953 Compilation provides:

"The term 'political subdivision' includes an instrumentality of the state of (or?) one or more of its political subdivisions, or of the state and 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 subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision."

If a precinct is a political subdivision within the meaning of the Social Security law, then the precinct should have its own separate social security plan. But we believe the term "political subdivision" as used in the social security law does not include a precinct. As the **Witt** case pointed out, a precinct has no corporate existence. A precinct is not a separate juristic entity; it is not self governing; no suits are brought by or against it; it has no power to contract, etc. In fact, a precinct is created largely for election purposes, and for defining the election and jurisdiction of justices of the peace and constables. Therefore, it does not meet the test of being legally separate and distinct from the county, and a precinct should, in our opinion, be considered part of the county for social security purposes.

It follows that a precinct officer should be included as a county employee for social security purposes. Justices of the Peace, therefore, would be included in the county Social Security coverage group, if the Federal-State Agreement is amended to extend coverage to persons compensated on a fee basis.