

Opinion No. 70-46

April 29, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Leonard T. Valdes Administrator Social Security Division Public Employees Retirement Association P.E.R.A. Building Santa Fe, N.M. 87501

QUESTIONS

QUESTIONS

Is the mayordomo of a community ditch association considered an officer of a political subdivision of this state for social security coverage purposes?

CONCLUSION

Yes.

OPINION

{*78} ANALYSIS

The officers of a community ditch association are the mayordomo (or superintendent) and three commissioners. Section 75-14-12, N.M.S.A., 1953 Compilation. Under the direction of the commissioners, the mayordomo is the executive officer of the ditch. Section 75-14-21, N.M.S.A., 1953 Compilation. The mayordomo is elected by the qualified members of the ditch, Section 75-14-12, supra, and his pay is determined by the majority of the owners in the ditch. Section 75-14-18, N.M.S.A., 1953 Compilation. The position of mayordomo is one of both officer and employee of the community ditch association. He is an officer in the sense that he is the executive officer of the ditch, and he is an employee of the ditch in the sense that he is paid by the ditch and is under the direction and supervision of the commissioners.

Prior to 1965, there was no statutory answer to the question of whether the ditch was a political subdivision of the State of New Mexico. In an exhaustive and definitive study of the question, however, this office concluded in 1963 that a community ditch association was most certainly a political subdivision of this state. Attorney General Opinion No. 63-112, issued August 28, 1963, a copy of which is attached to this opinion. This subject was re-examined again in 1964 and this office confirmed its earlier opinion. Attorney General Opinion No. 64-95, issued July 24, 1964. Any doubt that remained after these opinions, was removed by the passage of Section 75-14-24.1, N.M.S.A., 1953 Comp., which provides:

"Acequia and community ditch associations are hereby declared to be political subdivisions of the state."

This Act, Laws 1965, ch. 145, § 1, took effect on March 19, 1965.

Social security coverage and protection extends to political subdivisions of this state. Section 5-7-1, N.M.S.A., 1953 Compilation. The community ditch association fits into the definition of a "political subdivision" under the Social Security Coverage Act. Section 5-7-2 (f.), N.M.S.A., 1953 Compilation.

The opinion of this office is, therefore, that the mayordomo of a community ditch association is considered an officer of a political subdivision of this state for social security coverage purposes.

By: James C. Compton, Jr.

Assistant Attorney General