

Opinion No. 73-61

August 23, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Leonard Valdes, Administrator Social Security Division Public Employees Retirement Association Betty Lujan, Director Social Security Division Public Employees Retirement Association P.E.R.A. Building Santa Fe, New Mexico 87501

QUESTIONS

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Are the "Regional Law Enforcement Planning Commissions" established prior to Executive Order 73-2, dated January 10, 1973, instrumentalities of (A) the state, (B) one or more political subdivisions of the state, or (C) the state and one or more of its political subdivisions, whereby employees of such commissions are eligible for social security coverage under 42 U.S.C. 418(b)(2)?

CONCLUSION

No.

OPINION

{*121} ANALYSIS

Sometime in 1970 Regional Law Enforcement Planning Commissions were set up in several counties of this state and the employees of such commissions were paid through their respective counties acting as fiscal agents. However, until Executive Order 73-2, dated January 10, 1973, no law had been enacted authorizing the organization of the commissions, {*122} nor had an executive order or any other regulation been promulgated whereby such commission attained legal status.

42 U.S.C. 418(a)(1) requires the Secretary of Health, Education and Welfare, at the request of any state, to enter into an agreement with such state for the purpose of extending social security coverage to individuals employed by such state or "any political subdivision thereof." For purposes of this section the term "political subdivision" is defined as including "an instrumentality of (A) a state, (B) one or more political subdivisions of a state, or (C) a state and one or more of its political subdivisions.

In our opinion, without authorizing legislation, regulation or executive order, the Regional Law Enforcement Planning Commissions were not "political subdivisions" of the State of New Mexico and its employees were therefore not entitled to social security coverage until the effective date of Executive Order 73-2, **supra**. Evidence of this lack

of public employee status is found in the fact that no contributions were paid to the Public Employees Retirement Association on behalf of the affected employees. So, even though the employees of the Regional Law Enforcement Planning Commissions have performed valuable services on behalf of the state and the counties, both before and after January 10, 1973, such individuals were not employees of a "political subdivision" as that term is defined in 42 U.S.C. 418(a)(1) and were not therefore entitled to social security coverage prior to the effective date of Executive Order 73-2, **supra**.

December 18, 1973

Addendum to opinion of the Attorney General

No. 73-61,

Dated August 23, 1973

In Opinion of the Attorney General No. 73-61, dated August 23, 1973, reference is made in both the Question and Analysis to Executive Order 73-2, dated January 10, 1973. This is incorrect and all references to Executive Order 73-2 should be changed to refer to "Executive Order No. 73-11, dated May 24, 1973, effective June 30, 1973."

By: Leila Andrews

Assistant Attorney General