

Opinion No. 43-4357

August 6, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Guy Shepard, Treasurer, New Mexico Committee of National War Fund, Santa Fe, New Mexico

I have your letter of August 4, 1943, in connection with any possible liability of the New Mexico Committee of National War Fund for the payment of Unemployment Compensation and Social Security Taxes on its employees in New Mexico.

This Committee is, of course, a non-profit organization. The purposes for which this Committee was organized are:

"To plan, promote, organize, manage, supervise, conduct and coordinate, directly or indirectly or in collaboration with other persons, the solicitation and raising of funds, by public appeal, public subscription or otherwise, for charitable, religious, literary, educational and scientific needs related to or arising out of war, including maintenance of the morale of members of armed forces and of civilians affected by war, and including relief of needs, material and spiritual, created by or arising out of war, its incidents and consequences.

"To prepare and promulgate budgets, programs, and plans for the above purposes, as well as policies and procedures, and means and methods, to be adopted for obtaining such funds, to allocate and distribute the task of raising funds for such purposes, and in that connection to collaborate with, and coordinate and participate in the activities of, relief associations, service organizations, war chests, community chests and other persons engaged in such activities.

"To solicit and collect funds and contributions, and to receive by gift, deed, bequest or devise, and otherwise to acquire, money and property of every kind and description for the purposes herein described.

"To hold, administer, allocate, distribute, expend, contribute, use and otherwise dispose of its funds, and resources for any and all of the charitable, religious, literary, educational or scientific purposes hereinabove referred to, either directly or by allocating, distributing, expending, contributing or advancing the same to relief corporations, service organizations or other non-profit bodies, for use by them for any or all of such purposes."

I call your attention to a Social Security Act, Title 42, Section 1011, U.S.C.A. (b) which provides:

"The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except --

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 57-822 (7) (f) has an identical exception pertaining to our Unemployment Compensation Law.

In view of the foregoing, it is my opinion that the Committee of National War Fund is not subject to the Social Security Tax and Unemployment Compensation Tax.

Hoping that the foregoing is of some benefit to you, I remain

By HARRY L. BIGBEE

Asst. Atty. Gen.