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October 5, 1955

To: Leona Anderson, Acting Secretary, State Soil Conservation Committee  
Department of Agriculture

By: Robert H. McPhillamey, Deputy Attorney General

QUESTION: Whether Soil Conservation District Supervisors are required to comply with Social Security Law, the Wyoming Soil Conservation Districts being legal subdivisions of State Government? ANSWER: No, as reimbursement for necessary and traveling expenses are excluded from "wages."

Section 34-1403, subsection (a) and Section 34-1409, Wyoming Compiled Statutes, 1945, provide that a "District" or "Soil Conservation District" means a "governmental subdivision of this State, and a public body corporate and politic" and also that "a Soil Conservation District\*\*\*shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers\*\*\*".

In an opinion dated December 11, 1953, by Assistant Attorney General James L. Hettinger, it was determined that a soil conservation district is a political subdivision.

Other provisions and statutes pertinent to your question are:

Section 2, Session Laws of Wyoming, provides, in part:

"For the purposes of this Act--

"(a) The term 'wages' means all remuneration for employment, as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for 'employment' within the meaning of the Federal Insurance Contributions Act, would not constitute 'wages' within the meaning of the act.

"(b) The term 'employment' means any service performed by any employee of the State, or any political subdivision thereof, for such employer,\*\*\*

"(c) The term 'employee' includes administrative and elective officers of a State, or political subdivision thereof;  
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"(f) The term 'Political Subdivision' includes any instrumentality of the State, 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,\*\*\*"

Upon the basis of these provisions, it would seem that a Soil Conservation District Supervisor is an employee within the Social Security law.

However, Section 34-1408. Wyoming Compiled Statutes, 1945, provides, in part, as follows:

\*\*\*A supervisor shall receive no compensation for his services, but he may be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.\*\*\*"

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In view of this provision, it is our opinion that the Supervisor is not receiving "remuneration for employment", and that the amounts reimbursed to the Supervisor for expenses do not fall within the definition of "wages."

Title 20, Code of Federal Regulations (1949 Ed.), No. 403.828 (e) (4) provides:

"Ordinarily, amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, are excluded from wages only to the extent actually incurred and accounted for by the employee to the employer."

In 14 A.L.R. 2d annotation, note No. 3 at page 636, is the following editorial statement:

"When an allowance for subsistence or maintenance is included in an employees 'salary' or 'pay', the question arises whether such allowance should figure in the computation of the pension or retirement benefits based on the 'salary' or 'pay' received. Generally, it has been held not to be included, although special facts or statutes in some cases have resulted in a contrary ruling."

Inasmuch as the Supervisor is reimbursed only to the extent of expenses actually incurred and accounted for by him as an employee to his employer, it would appear that he is receiving no "remuneration for employment."

I refer you also to an opinion of Assistant Attorney General James L. Hettinger, dated March 13, 1953, upon the same point.

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