

OPINION 20

fees to be charged thereunder shall be deposited in the enforcement fund of the Indiana Alcoholic Beverage Commission to be used for the purpose of administering the provisions of the Acts of 1953, Ch. 194 which created the commission on alcoholism, or for the purpose of administering any law hereafter creating a successor to the commission on alcoholism.

In view of the foregoing, my answers to your questions are as follows:

1. The Acts of 1953, Ch. 194, Sec. 15, *supra*, was not repealed by the Acts of 1955, Ch. 335, *supra*.

2. Monies received pursuant to the terms of the Acts of 1955, Ch. 335, *supra*, when deposited in the enforcement fund of the alcoholic beverage commission, must be earmarked solely for use by the commission on alcoholism, or its successor for the purpose of administering the Acts of 1953, Ch. 194, *supra*.

3. The commission on alcoholism does not have the right to draw upon unappropriated funds collected under the provisions of the Acts of 1955, Ch. 335, *supra*, under and pursuant to the Acts of 1953, Ch. 194, Sec. 15, *supra*, since, under the Indiana Constitution, Art. 10, Sec. 3, unappropriated money of this nature may not be drawn from the treasury.

I hope that the foregoing has fully answered your questions.

OFFICIAL OPINION NO. 20

May 21, 1956

Mr. Cecil Bolinger
Executive Secretary
Public Employes' Retirement Fund
145 West Washington Street
Indianapolis, Indiana

Dear Mr. Bolinger:

This is in answer to your letter of April 26, 1956, reading in part as follows:

"The Board of Trustees of the Public Employes' Retirement Fund has asked that you give your Official

Opinion as to whether prosecuting attorneys are eligible to receive O. A. S. I. coverage and if so, what unit of government would take the necessary action to bring them under the law?

“Also, who would be responsible for deduction of the employee’s tax and for payment of the employer’s share of the O. A. S. I. contributions?”

Pursuant to amendments of the Federal Social Security Act, certain employees of the State and of political subdivisions thereof may be brought under the provisions of the Social Security Act pursuant to an agreement between the State and the Federal governments.

See 42 U. S. C. A. (1955 Supp.), Section 418.

The Indiana Legislature has passed acts authorizing the State to enter into such an agreement. The last expression of the Indiana Legislature was Acts of 1955, Ch. 340, as found in Burns’ Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1902 *et seq.*

In Burns’ 60-1902, *supra*, the following definition is found:

* * *

“(f) The term ‘political subdivision’ shall mean a county, city, town, township, any political body corporate, any body politic and corporate, any political entity, any local housing authority, any school corporation, a public library or public utility of any county, city, town or township, said public utility to be included whether operated by the city or town or under the terms of a trusteeship for the benefit of such city or town, or a participating unit as defined in the public employees’ retirement act, the same being chapter 340 of the Acts of 1945 as such act has been amended: Provided, That a state agency shall not be considered to be a political subdivision. ‘Local unit’ shall mean any department or division of, or associated with, any political subdivision which said department or division is authorized by law to determine, establish and fix a rate of taxation on property on which said department

OPINION 21

or division receives revenue independently of or in addition to funds obtained from taxation.”

It has been held that prosecuting attorneys are not state, county or township officers; *State of Indiana v. Patterson* (1914), 181 Ind. 660, 663, 105 N. E. 228. A prosecuting attorney is a constitutional judicial officer; *State ex rel. Stanton v. Murray*, Judge (*Stanton v. State of Indiana*) (1952), 231 Ind. 223, 234, 108 N. E. (2d) 251. The prosecuting attorney is elected in each judicial circuit by the voters thereof; *Indiana Constitution*, Art. 7, Sec. 11, and is commissioned by the Governor; 1 R. S. 1852, Ch. 19, Sec. 1, *Burns' Indiana Statutes* (1951 Repl.), Section 49-201. A prosecuting attorney is an officer of the judicial circuit; *The State ex rel. Howard v. Johnston* (1884), 101 Ind. 223, 229. If a prosecuting attorney is eligible for coverage by Social Security he, obviously, must be an employee of the State, or of a political subdivision that comes within the foregoing definition.

You will note that the definition of a “political subdivision” as set out above in *Burns' 60-1902, supra*, does not include a judicial circuit. Therefore, it is my opinion that a prosecuting attorney is not an officer or employee of a “political subdivision” as used in said Act and is, therefore, not subject to Social Security thereunder.

This answer disposes of the other contingent questions in your letter and I trust, fully answers your inquiry.

OFFICIAL OPINION NO. 21

May 24, 1956

Mr. Wm. C. Stalnaker, Director
Indiana Employment Security Division
141 South Meridian Street
Indianapolis 9, Indiana

Dear Mr. Stalnaker:

This is in reply to your request for an Official Opinion, which reads as follows:

“The ‘Supplemental Unemployment Benefit Plan,’ commonly referred to as the ‘Ford Plan,’ established