

**OPINION
69-327**

January 16, 1969 (OPINION)

Mr. Martin N. Gronvold

Executive Director

Old Age and Survivor Insurance System

and the

Social Security Contribution Fund

RE: Social Security - Civil Defense Teachers - Employees

You have inquired if the agency known as Civil Defense Adult Education can properly exclude certain monies from the term "wages" as it would be defined under the Social Security Act, (Chapter 52-10 of the North Dakota Century Code).

Chapter 52-10 of the North Dakota Century Code concerns employees of the State of North Dakota and political subdivisions within the State under Federal Social Security who are made eligible for social security benefits solely by reason of agreement between the State of North Dakota and the United States Secretary of Health, Education and Welfare.

Your concern is whether the money in question, which is paid to certain teachers in local schools throughout the State for conducting educational programs for adults in the principles of individual, family, and community protection to the public (civil defense), is a wage paid to an employee of the State in employment which is not excepted employment as provided for in Subdivisions (1) and (2) of Subsection b. of Section 52-10-02 of the North Dakota Century Code. Independent investigation, in addition to the information submitted in your request, reveals the following formation, background, purpose, and operation of the instrumentality designated as Civil Defense Adult Education.

The Civil Defense Adult Education Program comes into being and obtains operational funds solely through federal law, i.e., Public Law 81-152, Title III, Section 302 (c) (15), and The Federal Civil Defense Act of 1950, as amended, (64 Stat. 1245, Public Law 81-920). It is administered on the Federal level by the United States Office of Education, Department of Health, Education and Welfare. The United States Office of Education entered into a contract, by the authority mentioned and various executive orders, with the Office of Civil Defense to develop a civil defense adult education program through contractual agreement with State Departments of Education to teach the principles of individual, family, and community protection.

Any state which desires to avail itself of participation in this program must enter into a contract with the United States of America through the United States Contracting Officer of the United States Office of Education, Department of Health, Education, and Welfare.

The State of North Dakota has entered into such participating contracts each year, commencing with the year 1963, and extending through 1968. With each contract there is submitted a state plan and a budget which, when approved, is then made up into a cost reimbursement contract and executed by the Contracting Officer of the United States Office of Education and the North Dakota Department of Public Instruction.

To administer the program on the state level there is a Civil Defense Adult Education Coordinator. He is to maintain liaison with the State Civil Defense Director.

That part of the program which is of concern to you is the hiring of teachers to teach Personal and Family Survival (PFS) courses in the various communities throughout the state where there has been application for such courses. Instructors for teaching of such local courses are selected with the assistance of the local superintendent of schools. They must be qualified teachers and they must be certified by the Department of Public Instruction to teach the PFS course.

Payment for their teaching services is made in accordance with the contract limits set out in the budget and is made directly to the teachers under authorization of the Civil Defense Adult Education Coordinator.

It is questioned whether these payments are wages or compensation for services rendered by independent contractors. The question resolves into whether or not there exists an employer-employee relationship between the PFS instructors and the Civil Defense Adult Education as an instrumentality of the State of North Dakota.

To determine this, the provisions in the federal contract and the state plan incorporated therein will be the deciding factors.

Local PFS instructors must complete a training course at the Office of Civil Defense Staff College at Battle Creek, Michigan, before they can be certified as qualified teachers by the Department of Public Instruction to teach the PFS course. The subject matter of the local PFS course is specified by the Office of Civil Defense and the United States Office of Education. It is required that the Student's Manual, the Teacher's Manual, the supplementary references, the films, slides, and other visuals provided through the United States Office of Education, covering the required course content, be used as the basic course materials. Any supplemental material must be approved by state and local civil defense agencies. The PFS instructor is not responsible for the organization and content of the local PFS courses, this being within the province of the CDAE Coordinator. Requests for approval of a PFS course must be submitted by the Civil Defense Adult Education instructor to the CDAE Coordinator, setting forth the specific location and time of instruction, with indication whether the local civil defense director has been notified of the proposed course. The length of the PFS course is prescribed and the local PFS instructor must adhere to the attendance requirements with strict attention to directions set forth in the plan. Certificates are awarded to the graduates who complete

the PFS course by the North Dakota Department of Public Instruction.

In view of the foregoing, it is evident that the PFS instructors do not exercise the degree of independence in carrying out their assigned tasks to constitute them independent contractors.

It is equally clear that the Civil Defense Adult Education Agency has the right of control over the PFS instructors.

In *Bernardy v. Beals*, 28 N.W.2d. 374, 75 N.D. 377, it is stated:

"One of the most important tests to be applied in determining whether the relationship of employer-employee exists is whether the person for whom the work is done has the right to control not merely the result, but the manner in which the work is done and the methods used in its performance."

The method, the means, the instrumentalities, and the result to be reached, are all clearly delineated for the PFS instructor.

Therefore, it is our opinion that the remuneration in question is wages paid to an employee.

HELGI JOHANNESON

Attorney General