

Opinion No. 78.**Montana Armory Board—Employees—
Social Security Tax.**

Held: The Montana Armory Board is an instrumentality of the state within the meaning of subdivision 7, Section 1011, Title 42, F. C. A., and is therefore exempt from paying the social security tax levied on income from employment by the Montana Armory Board.

June 24, 1943.

Mr. L. R. Richardson, Chairman
Montana Armory Board
Helena, Montana

Dear Mr. Richardson:

You have requested my opinion whether under the law the Montana

Armory Board must deduct the social security tax from its payroll.

The social security tax is levied by virtue of Section 1001, Title 42, F. C. A., 49 Stat. 636, 42 U. S. C. A. 409:

"In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages received by him after December 31, 1936, with respect to employment after such date:

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum."

Section 1011, F. C. A., provides in part:

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

(7) Services performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivision . . ."

In Opinion No. 190, Volume 19, Report and Official Opinions of the Attorney General, this office considered the question whether the employees of the Montana Armory Board were covered by the unemployment compensation laws of Montana. It was there held, page 304, the Montana Armory Board is a wholly owned state instrumentality, since it has no power or authority—except such as has been granted by the legislature—and therefore was not covered by the unemployment compensation laws of the state. The opinion cited the case of *Geboski v. Montana Armory Board*, 110 Mont. 487, 103 Pac. (2d) 679, in which it was held the Montana Armory Board is a state instrumentality, and, as such, its property is exempt from taxation. The court in that case said the "public corporation" created by Chapter 169, Laws of 1939, is in the same category as a municipal corporation. The purposes are for public benefit the same as in the case of a municipal corporation, and the constitutional provision (Section 2, Article XII) was held broad enough to exempt the property held by the board, at least so long as the property was used exclusively for

armory purposes as provided in the act.

On the authority of that case it is my opinion the Montana Armory Board is an instrumentality of the state within the meaning of subdivision 7, Section 1011, Title 42, F. C. A., and is therefore exempt from paying the social security tax levied on income from employment by the Montana Armory Board.

Sincerely yours,
R. V. BOTTOMLY
Attorney General