

Opinion No. 20**Cities, Counties and School District Budgets—Anticipation of Liability for Contribution to Social Security.**

HELD: It is within the power and authority of the governing offices of school districts, cities and counties to provide in the current budget for the employer's contribution in anticipation of a favorable vote by referendum of the employees to be covered under the Social Security Act.

June 22, 1955.

Mr. Norman C. Robb
County Attorney
Park County
Livingston, Montana

Dear Mr. Robb:

You have requested my opinion concerning the manner of financing the employer's share of Social Security coverage by cities, counties and school districts.

Chapters 270 and 271, Laws of 1955, extend coverage under the Federal Social Security Act to employees of the state and to political subdivisions and to members of the staff and teachers of school districts of the state. It is to be noted that both of these laws were not specifically made operative on passage and approval and as a consequence, under Section 43-507, R.C.M., 1947, both statutes become effective July 1, 1955.

It is to be noted that under Section 218 (d) (3) of the Social Security Act, a referendum of the employees must be held and a majority must approve coverage under the Social Security Act. Ninety days notice of such referendum must be given and as the law is not effective until July 1, 1955, the earliest date for such an election will be approximately October 1. However, budgets for cities, counties and school districts must be adopted prior to October 1, and as a consequence, a favorable vote for coverage under the Social Security Act by the employees of these governmental units

would impose an immediate obligation on each governmental unit. The trustees of the school districts, the boards of county commissioners and the councils of cities may anticipate in their budgets that each as an employer must make contribution for the Social Security coverage.

The source of the money for such payments must be the general fund of each governmental subdivision. No additional levy may be made for the employer's contribution for Social Security and this is in direct contrast with the contributions to the Retirement Systems. Section 68-603, R.C.M., 1947, authorizes the city to make payment from each fund from which compensation for personal services are paid and, if general revenue sources are insufficient, then a special tax may be levied. A similar provision is made in Section 75-2709, R.C.M., 1947, for school districts.

As there is no statutory authorization for the levying of a special tax to meet the employer's contribution by cities, counties and school districts for the Social Security of its employees, each unit must provide in the general fund for such an expenditure. If the governing offices of each of these political subdivisions propose to call a referendum and anticipate a favorable vote, it would appear advisable to include in the budget now being prepared an item for such liability. In the event the employees did not cast a favorable vote on the question of coverage under the Social Security Act, then such funds so appropriated in the budget may be carried in the budget and used in a subsequent budget as cash on hand.

It is therefore my opinion that it is within the power and authority of the governing offices of school districts, cities and counties to provide in the current budget for the employer's contribution in anticipation of a favorable vote by referendum of the employees to be covered under the Social Security Act.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.