



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 18, 2023

Thomas L. Tullos, Esq.
Attorney, Town of Louin
Post Office Drawer 567
Bay Springs, Mississippi 39422

Re: Withholding of Social Security and Taxes from Salary

Dear Mr. Tullos:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Is the town of Louin (“Town”) required to withhold Social Security, federal taxes, state taxes, and Medicare taxes from the compensation paid each month to the aldermen and town attorney?

Brief Response

This office is unable to opine on questions of federal law; therefore, we offer no opinion on the questions of Social Security, federal taxes, and Medicare. With regard to state taxes, compensation paid to aldermen would be considered wages paid to a salaried employee of the Town for purposes of taxation. However, whether an attorney working for a municipality is employed as a city employee or as an independent contractor is a determination of fact to be made by the governing authorities based on the circumstances surrounding employment.

Applicable Law and Discussion

The Office of the Attorney General may not interpret or opine on federal law; therefore, we are unable to answer your questions about federal income tax, Social Security, and Medicare. We refer you to the appropriate federal officials for assistance with these questions. However, please note that the IRS defines employee as “an officer, employee, or *elected official* of the United States, *a State, or any political subdivision thereof*, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.” 26 U.S.C.A. § 3401(c) (emphasis added).

Mississippi Code Annotated Section 21-3-5 authorizes the governing authorities of a municipality to hire employees, set their compensation, and prescribe their duties. Consequently, this office has opined that Section 21-3-5 provides authority for the governing authorities to establish all reasonable policies relative to compensation of the mayor and board of aldermen. MS AG Op., *Greer* at *1 (Jan. 12, 1994); *see also* MS AG Op., *McCreary* at *1 (July 29, 2005) (opining that an alderman's salary is set and determined by the municipal governing authorities). This office has also opined that for purposes of workers' compensation coverage, even though aldermen "are elected rather than hired under a contract of employment, elected officials receive a salary and perform official duties on behalf of the municipality, and this being the case, are to be considered 'employees' of the municipality. . . ." MS AG Op., *Tullos* at *2 (Dec. 19, 2003) (emphasis in original).

Section 21-15-25 authorizes a municipality to hire an attorney for the municipality and states, in pertinent part:

The governing authorities may annually appoint an attorney-at-law for the municipality, prescribe his duties and fix his compensation, and/or they may employ counsel to represent the interest of the municipality, should the occasion require. For services and duties which the regular city attorney is not required to perform as a result of his employment as such, and which are not covered by the regular compensation paid him, such municipal attorney may be employed and compensated additionally.

Appointing an attorney to perform work for the municipality is discretionary. MS AG Op., *Pepper* at *1 (May 29, 2015). An attorney may be hired and paid under a regular contract for employment, making him a municipal employee, or hired by the municipality as an independent contractor on a temporary basis, "should the occasion require." Miss. Code Ann. § 21-15-25. "An attorney employed to represent the City and paid a specified amount each month, for which compensation the attorney at all times represents the City, is a city employee and the compensation paid is salary." MS AG Op., *Blackwell* at *3 (Nov. 6, 1980) (internal quotation marks and citation omitted). Whether an attorney working for a municipality is employed as a city employee or as an independent contractor is a determination of fact to be made by the governing authorities based on the circumstances surrounding employment. *Blackwell* at *4.

The State income tax withholding provisions are found in Section 27-7-305, which provides that employers shall deduct and withhold from *wages paid to employees* an amount to be "credited against the tax liability of the employee. . . ." *Id.* at (1) (emphasis added). It is the opinion of this office that aldermen are employees of the municipality for state income tax purposes, as are salaried attorneys who are city employees. Whether an attorney working for a municipality qualifies as an employee is a determination of fact to be made by the governing authorities. We recommend seeking further guidance on questions of income tax withholding from the Department of Revenue.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Gregory Alston*

Gregory Alston
Special Assistant Attorney General

OFFICIAL OPINION