

## Opinion No. 55-6284

September 15, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** John C. Hays, Administrator, Social Security Division, Public Employees' Retirement Association of New Mexico, P. O. Box 2237, Santa Fe, New Mexico.  
Attention: Charles C. Staab, Administrative Assistant

We have your letter of September 6 in which you request an outline of a course of procedure for your office to follow based upon the following facts:

- (a) Silver City wishes to affiliate with the Social Security System.
- (b) Silver City is a special charter city and unaccountable to the State Tax Commission so far as having its budget approved. Also the city does not have to submit monthly or annual reports of income or expenditures to the State Comptroller.
- (c) The State is obligated to pay the required amounts for all state and subdivision employees covered under the Social Security Program.
- (d) In all other cases a certificate is required from the State Comptroller that such covered political subdivision has budgeted and set aside funds to carry out provisions of the agreement.

It appears that you want to know:

1. What recourse the Public Employees' Retirement Board has to cause the required payments to be made by the Silver City authorities?
2. What procedure should the Board follow in this particular case?

We find that Chapter 172, Laws of 1955, in Section 5 (d), provides a means by which delinquent payment with interest may be collected from political subdivisions. This collection may be made either by suit in a court of competent jurisdiction or by "deduction from any other moneys payable to such subdivision by any department or agency of the state." Further, we are of the opinion that by court action the Board can compel the budgeting of the necessary money for the payment of the sums due under this system.

Under the provisions of Chapter 172, Laws of 1955, Section 5 (a), the Board has to approve the plan submitted by any political subdivision. This plan must contain, among other things, the source or sources from which the funds are to be derived. Also there is authority in the section to require "such reports, in such form and containing such information, as the state agency may from time to time require . . ." Section 7, Chapter

172, Laws of 1955, provides that the Board shall have the authority to "make and publish rules and regulations, not inconsistent with the provisions of this act, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act."

Clearly, it would appear that the Board could require whatever is necessary to show that a budget item has been included so as to insure the payment of the amount due when the agreement is entered into. Also, the Board could require whatever reports as are necessary to insure that the fund is being accumulated so that the delinquency will not occur. It seems that the Board should require whatever reports it deems necessary to insure first the budgeting of the funds and second that the funds are being collected. By way of suggestion, it might be that the Board would find it advisable to have a certified copy of the budget of the political subdivision which would indicate that the proper provisions were being made to collect the funds. A monthly report might be in order as to the collection and proper deposit of the funds so that the Board could be assured of the availability of the funds when payment is required. All of this is merely by way of suggestion. It is very likely that the Board will find other means by which such assurances can be made. It is our opinion that the Board has the authority to see that the payments are made.

Trusting we have answered your request, we remain

By Paul L. Billhymer

Assistant Attorney General