

Opinion No. 61-120

November 27, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Charles C. Stabb, Director, Social Security Division, Public Employees Retirement Association, Santa Fe, New Mexico

QUESTION

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For purposes of Social Security coverage, are persons holding such jobs as radio operator, jailer, dog catcher and cook who are deputized as deputy sheriffs to be considered policemen?

CONCLUSION

No, not in the usual case.

OPINION

ANALYSIS

In presenting this question, you refer to Attorney General Opinion No. 6283 (1955) wherein this office held that for purposes of Social Security coverage, a county sheriff is to be considered a policeman. The rationale of the opinion is that by statute a sheriff is a conservator of the peace and thus he is a policeman. Section 15-40-2, N.M.S.A., 1953 Comp.

Since we are here concerned with an area in which there is Federal-State cooperation, we deem it appropriate to refer to the following comment in the Handbook for State Old Age and Survivors' Insurance Administrators, § 253:

"The terms 'policeman' and 'fireman' do not include services in positions, which, although connected with police and firefighting functions, are not policeman or fireman positions."

The Handbook goes on to point out that

"In many jurisdictions, services as a game warden, forester, forestry patrolman, crime investigator supervisor, stenographers in a police department, **sheriffs and highway patrolmen** have been held not to be in 'policeman's' positions." (Emphasis added)

Insofar as sheriffs are concerned, we took a contrary view in Opinion No. 6283. For the reasons given in that Opinion, the same rule would presumably be applicable to full time deputy sheriffs operating continually as conservators of the peace.

However, it must be kept in mind that the phrase "conservator of the peace" is a relative one. To a certain extent every citizen can and sometimes does act in this capacity. Each citizen has certain powers of arrest and perhaps under some factual conditions, failure by a private citizen to so act would be deemed morally reprehensible. Yet we certainly do not classify each citizen as a policeman.

We assume that the deputized persons in jobs such as you mention are actually remunerated for their efforts as dog catcher, cook, etc., rather than in their capacity as deputy sheriffs. We also feel an assumption is warranted that such persons spend a majority of their working time fulfilling the duties of their paid position and that they probably have been deputized in order to aid in what might be termed emergency situations. In such cases, we do not feel that these persons can properly be designated policemen. There might perhaps be unusual situations where a deputized person other than a full time deputy sheriff could be considered a policeman, but this would be exceptional and would be dependent upon the particular fact situation.