

OFFICE OF THE ATTORNEY GENERAL

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Mr. J. Ben Swindle, Director
Alabama State Agency for Social Security
Montgomery, Alabama 36130

State Agency for Social
Security - Education - Funds

Code of Alabama 1975, §36-28-8
(e)(1) discussed.

Opinion by Assistant Attorney
General Forehand

Dear Mr. Swindle:

I have received your request for an Attorney General's opinion relating to our interpretation of Code of Alabama 1975, §36-28-8(e)(1). That subsection provides as follows:

"(e)(1) There is appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under sections 36-28-5 and 36-28-7, to be available for the purposes of subsections (b) and (c) of this section, until expended, such additional sums as are found to be necessary in order to make the payments to the federal agency which the state is obligated to make pursuant to an agreement entered into under section 36-28-4; provided, that the sums necessary to match social security contributions by employees covered under the teachers' retirement system are

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hereby appropriated annually from the Alabama special educational trust fund; provided further, that the sums necessary to match social security contributions by state employees other than those covered by the teachers' retirement system are hereby appropriated annually from the fund from which the salaries of such employees of each employer are paid.

In the case of those departments supported wholly by transfers from other state funds, there is hereby appropriated from the supporting funds such additional amounts as may be necessary to pay the sums necessary to match social security contributions by employees of each department so supported in the same proportion as the other state funds contribute to the support and maintenance of such department."

You pose nine questions relating to this subsection. Each question is set forth below together with our answer:

"1. If a school employee is full-time, permanent, and a member of the TRS; where is the matching employer tax for social security paid from?"

The employer contribution should be made from the Alabama Special Education Trust Fund (SETF).

"2. If a school employee is full-time, and permanent, and is not a member of TRS, but is in a position eligible for TRS, where is the matching employer tax for social security paid from?"

The employer contribution should be made from SETF.

"3. If a school employee is part-time and/or temporary, and is not a member of TRS, but is paid from SETF; where is the matching employer tax for social security paid from?"

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The employer contribution should be made from SETF.

"4. If a school employee is part-time and/or temporary, and is a member of TRS, but is not paid from SETF, where is the matching employer tax for social security paid from?"

The employer contribution should be made from SETF.

"5. If a school employee is paid from an appropriation or special fund (not Federal), (and not necessarily SETF), and is a member of TRS, where is the matching employer tax for social security paid from?"

The employer contribution should be made from SETF.

"6. If a school employee is paid from an appropriation or special fund (not Federal), (and not necessarily SETF), and is not a member of TRS, and is not in a position covered by TRS, where is the matching employer tax for social security paid from?"

The employer contribution should be made from the appropriation or special fund from which the employee is paid.

"7. If the SETF is the original source of fund appropriated to a program or department, and the appropriation states that employer costs for social security will be paid from the appropriation, where is the matching employer tax for social security paid from?"

The employer matching contribution should be paid from the appropriation to the program or department by which the employee is employed, provided the employee is not a member of and is not eligible to become a member of the teachers' retirement system (TRS).

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"8. If the SETF is the original source of funds appropriated to a program or department, and the appropriation does not state that the employer costs for social security will be paid from the appropriation, where is the matching employer tax for social security paid from?"

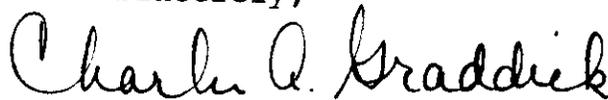
The employer matching contribution should be paid directly from SETF and not from the appropriation to the program or department by which the employee is employed.

"9. Please clarify the legal implication (if any) of the use of the word "employee", in the first part of the above quotation, and the use of the words "state employee", in the second part of ~~the~~ quotation."

TRS covers persons other than state employees. For this reason the term "employees", without modification, is used in the first proviso. All employees, whether state employees or not, who are members of TRS are covered by the first proviso. The second proviso qualifies the term "employee" and is meant to cover all employees of the State of Alabama not covered by TRS.

I hope this fully answers your questions. If I can be of further assistance, please call on me.

Sincerely,



CHARLES A. GRADDICK
Attorney General

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