

**OPINION NO. 88-021****Syllabus:**

Pursuant to 26 U.S.C.A. §§3101(b), 3102(a), and 3121(u)(2), Medicare taxes must be deducted from the wages of cemetery sextons hired by a township subsequent to April 1, 1986.

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**To: Dennis E. Barr, Hardin County Prosecuting Attorney, Kenton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988**

I have before me your request for my opinion concerning the deduction of Medicare taxes from the wages of certain township employees. You indicate that the Jackson Township Trustees have hired three persons to be cemetery sextons for one year. These persons have other sources of income from which all taxes, including F.I.C.A. taxes, are deducted. Your question is whether the township clerk must deduct Medicare taxes from the wages paid to these individuals by the township.

26 U.S.C.A. §§3101 to 3126, also known as the Federal Insurance Contributions Act (F.I.C.A.), impose certain taxes on employers and employees. 26 U.S.C.A. §3101(a) (Supp. 1987) imposes a tax on employees' wages to provide for old-age, survivors, and disability insurance. 26 U.S.C.A. §3101(b) (1979) imposes a tax on employees' wages to provide for hospital insurance. These taxes are imposed for the purpose of funding, respectively, the Social Security program and the Medicare program. 26 U.S.C.A. §3101(b)(6) (1979) provides that the hospital insurance tax rate on wages received after December 31, 1985 is 1.45 percent. 26 U.S.C.A. §3102(a) (1979) requires that the employee's employer deduct the amount of the hospital insurance tax as the wages are paid to the employee.

Persons employed by a state or a subdivision thereof are exempt from the Social Security tax imposed by 26 U.S.C.A. §3101(a). *See* 26 U.S.C.A. §3121(b)(7) (Supp. 1987). Persons employed by a state or subdivision thereof must, however, pay the hospital insurance tax imposed by 26 U.S.C.A. §3101(b). *See* 26 U.S.C.A. §3121(u)(2) (Supp. 1987). There are several exceptions to this rule. The most important is that those persons who were employed by the same state or subdivision thereof prior to April 1, 1986 are not subject to the hospital insurance tax. *See* 26 U.S.C.A. §3121(u)(2)(C) (Supp. 1987). You have indicated that the persons in question were hired after April 1, 1986. Therefore, the exception contained in 26 U.S.C.A. §3121(u)(2)(C) does not apply and the amount of the hospital insurance tax must be

deducted from their wages. There are numerous other exceptions to the requirement that employees pay the hospital insurance tax. See 26 U.S.C.A. §3121 (Supp. 1987). The fact that the persons in question have other employment does not appear to exempt them from the tax, and the other exceptions listed in 26 U.S.C.A. §3121 do not appear to be relevant here.

Therefore, it is my opinion and you are advised that, pursuant to 26 U.S.C.A. §§3101(b), 3102(a), and 3121(u)(2), Medicare taxes must be deducted from the wages of cemetery sextons hired by a township subsequent to April 1, 1986.