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Social Security and Public Welfare - Self Employment - Material Participation

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SOCIAL SECURITY AND PUBLIC WELFARE—SELF EMPLOYMENT—MATERIAL PARTICIPATION—Plaintiff filed her application for old-age benefits under the Social Security Act on November 5, 1958. Eligibility for benefits depended upon her income as a farm landlord during 1956 and 1957 being considered self employment income within the meaning of the Social Security Law.¹ Plaintiff's claim was disallowed by the Social Security Administration on the grounds that her income was not from self employment, but rental income which ordinarily does not count for social security purposes. The defendant maintains that plaintiff's participation in the farming operation was only attributable to her investment in the land and not to the production operations. An action was brought in the United States District Court for judicial review of the Bureau's decision.² *Held*: That there was material participation and the claimant was entitled to benefit payments. *Benson v. Ribicoff*, 201 F. Supp. 187 (S.D. N.Y. 1962).

Self-employed individuals first came under Social Security in 1950, but the self-employed farmer was expressly excluded.³ In 1954 the Act was amended eliminating this exclusion, but rental income from real estate including "such rentals paid in crop shares" was still excluded.⁴ In 1956, coverage was extended to the "material participating" landlord.⁵ There has been considerable confusion and disagreement between the Social Security Administration and the Courts as to the statutory meaning of "material participation."

Of the eight cases dealing with this issue only one has not reversed the ruling of the Administration.⁶ The courts have consistently been more liberal in awarding benefits than the agency charged with the administration of this law. A land-

1. 42 U.S.C. § 411(a). "... any income derived by the owner. . . of land if (A) such income is derived under an arrangement between the owner. . . and another individual, which provides that such other individual shall produce agricultural. . . commodities on such land, and that there shall be material participation by the owner. . . in the production or the management of the production of such commodities, and (B) there is material participation by the owner. . . with respect to any such commodity."

2. 42 U.S.C. § 405 (g).

3. Act of Aug. 28, 1950, ch. 809, 64 Stat. 502.

4. Act of Sept. 1, 1954, ch. 1206, § 101(g)(1), 68 Stat. 1055.

5. Act of Aug. 1, 1956, ch. 836, § 104(c)(2), 70 Stat. 824-25.

6. Affirmed ruling of the Social Security Administration: *Foster v. Flemming*, 190 F. Supp. 908 (N.D. Ia. 1960). Reversed ruling of the Social Security Administration: *Henderson v. Flemming*, 283 F.2d 882 (5th Cir. 1960); *Harper v. Flemming*, 288 F.2d 61 (4th Cir. 1961); *Conley v. Flemming*, 294 F.2d 190 (9th Cir. 1961); *Shoenholz v. Flemming*, 295 F.2d 722 (5th Cir. 1961); *Wifstad v. Ribicoff*, 198 F. Supp. 198 (N.W.D. N.D. 1961); *Bridie v. Ribicoff*, 194 F. Supp. 809 (W.D. Ia. 1961); *Benson v. Ribicoff*, 201 F. Supp. 189 (N.E.D. N.D. 1962).

owner has been held to be "materially participating" where such participation was performed exclusively by an agent;⁷ and where it consisted solely in the making of a general farm plan and brief visits in the spring and fall.⁸ The Courts have even gone so far as to say that mere financial contribution to the farming operation constitutes "material participation".⁹ On the other hand the Social Security Administration has refused to award benefits where the claimant had cared for the livestock, cooperated in the management, had a substantial investment in the production activities, and lived on the farm.¹⁰

Both the Court and the Social Security Administration justify their respective holdings as being in compliance with the intent of congress.¹¹ It seems clear from the congressional reports that something more than the normal farm landlord participation was contemplated, and that there was a reason for the insertion of the words "material participation".¹²

Based on these Committee Reports the Social Security Administration has established four different tests as guides for determining whether the claimant has been "materially participating" in the farming operations or not.¹³ The basic factors involved in these tests are: physical labor; periodic inspections, advise and consultation; important management decisions; and substantial financial contributions, either of tools and equipment and/or production expenses.¹⁴

7. *Henderson v. Flemming*, 283 F.2d 882 (5th Cir. 1960), (son, as an independent contractor); *Harper v. Flemming*, 288 F.2d 61 (4th Cir. 1961), (a bank doing the management); *Foster v. Flemming*, 190 F. Supp. 908 (N.D. Ia. 1960), (a farm management company). By **Social Security Ruling No. 1962-1**, Jan. 1962, the Secretary ruled that "there is material participation if the material participation is by either the landlord or his agent or both."

8. *Conley v. Ribicoff*, *supra* note 6; *Wifstad v. Ribicoff*, *supra* note 6; *Benson v. Ribicoff*, *supra* note 6, (frequent visits, but not under an arrangement).

9. *Henderson v. Flemming*, 283 F.2d 882 (5th Cir. 1960), (dictum); above case cited in *Wifstad v. Ribicoff*, *supra* note 6, and in *Bridie v. Ribicoff*, *supra* note 6.

10. *Bridie v. Ribicoff*, *supra* note 6.

11. S.R. No. 2133, (84th Cong., 2d Sess. 1956); H.R. No. 1189, (84th Cong., 1st Sess. 1955); Con. R. No. 2936, (84th Cong., 2d Sess. 1956).

12. 3 U.S. Code and Adm. News (1956), p.3915, "The committee is of the opinion that in any case in which the owner or tenant establishes the fact that he periodically advises or consults with such other individual as to the production of the commodities and also establishes the fact that he periodically inspects the production activities on the land he will have presented strong evidence of the existence of the degree of participation contemplated by the amendment. If the owner or tenant also establishes the fact that he furnishes a substantial portion of the machinery, implements, and livestock used in the production of the commodities, or that he furnishes, or advances, or assumes financial responsibility for, a substantial part of the expense (other than labor expense) involved in the production of the commodities, the committee feels that he will have established the existence of the degree of participation contemplated by the amendment."

13. **Social Security Handbook OASI-135**, sections 1121-1132, or **Farm Rental Income OASI-33d**.

14. *Ibid*.

The Courts have insisted that some of these tests defeat the Congressional intent by imposing too harsh standards.¹⁵ The Act, as viewed by the Courts, should be construed liberally, favoring those claimants seeking benefits.¹⁶ The Social Security Administration on the other hand, insist that the use of these tests as guides limit the payments of benefits to those individuals who fulfill that degree of "material participation" demanded by Congress, and not to those landlords who retain broad supervisory powers for the protection of their investments.¹⁷ Congress chose the Social Security Administration to administer this law, and as such, the interpretation given to it by said agency should be given great weight in determining the correct interpretation.¹⁸ Courts in applying their own interpretations are crossing over into the field of legislation and administration, thus exceeding their judicial power of review.

The position of the farm-owning landlord under the present Social Security Law is perplexing and precarious. Congress failed to sufficiently define "material participation"; perhaps because of the great agricultural diversification in this country requiring an even greater diversification of farm arrangements. There is need of further legislation to clarify this vague and ambiguous term. Steps should be taken which would either bring the farm landlord under Social Security coverage or exclude him completely. But until such clarification is obtained from Congress, the objective tests put forth by the Social Security Administration are the most accurate guides to the present law, established only after comprehensive study of the law and practical experience in the administering of it. Unless there is sufficient evidence to show that they failed to award benefits to a claimant who fulfilled the objective standards set forth by the Administration, the determination of the Administration should be upheld. The Court is not the proper body to broaden and administer the law. Their duty is to see that the law is correctly applied to the facts.

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15. *Conley v. Ribicoff*, *supra* note 6.

16. *Poster v. Flemming*, *supra* note 7, *Carqueville v. Flemming*, 263 F.2d 875 (7th Cir. 1959); *Carrol v. Social Security Board*, 128 F.2d 876 (7th Cir. 1942).

17. *Social Security Handbook* OASI-135; see *Foster v. Flemming*, 190 F. Supp. 908 (N.D. Ia. 1960), *Farm Rental Income* OASI-33d, p. 8.

18. *Foster v. Flemming*, *supra* note 17, *Born v. Allen*, 291 F.2d 345 (D.C. Cir. 1960); *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, 113 F. Supp. 599 (E.D. Ia. 1953).