"Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such terms and conditions as are mutually agreed upon, for the use of its fire department and fire apparatus, if such contract is first authorized by the trustees of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipuated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

As indicated in the opinion of my predecessor which you have mentioned, the general power to enter into such contracts existed prior to the taking effect of Section 3298-60. In other words, in so far as the general power is concerned, the right of a township to enter into a contract for fire protection to be supplied by a municipality, is declaratory of what the law was held to be by the Attorney General. However, in the enactment of said Section 3298-60, the Legislature has undertaken to fix certain limitations for such contract. That is to say, under said section such a contract may not exceed a period of three years and the same must be first authorized by the trustees of the township and the council of such municipality. The other limitation to which you refer is that, "such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract." It is, of course, difficult to determine definitely what actuated the Legislature to make such provision for the reason that it may be difficult for a taxing authority to determine in advance the proper amount for a given contract. There may be few fires in a given time, or there may be many, all of which indicate that a stipulated price per fire might be an equitable way of arriving at the amount under a given contract.

However this may be, it seems that the Legislature in plain and unambiguous language has expressly provided that such contract shall provide for a fixed annual charge and that contracts entered into after the taking effect of said act must necessarily contain such provisions. It follows that there is no authority for any other method of payment.

Respectfully,
GILBERT BETTMAN,
Attorney General.

570.

WORKMEN'S COMPENSATION LAW—SECTIONS 1465-74 AND 1465-75, GENERAL CODE, CONSTRUED—WHEN PROVISIONS NOT APPLICABLE—SPECIFIC CASE.

SYLLABUS:

The provisions of Sections 1465-74 *and* 1465-75, *General Code, relating to the payment of compensation to be paid from the surplus fund created by Section* 1465-54, *General Code, are not applicable to the judgment for compensation of dependents of employes who died subsequent to January* 1, 1923, *as a result of injuries received prior to said date.*

COLUMBUS, OHIO, June 28, 1929.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge receipt of your recent request for my opinion as follows:

"The Industrial Commission desires your opinion on the following statement of facts:

Mr. William Hanna, an employe of the Indian Hill Coal Co. was injured on October 5, 1922, by having his back broken in a coal mine when a stone fell on him. At the time of the injury the employer was not a contributor to the State Insurance Fund although amenable to the law. On October 11, 1922, the employer applied for coverage and received same as of October 11, 1922. This coverage continued until May 15, 1923. No further payments were made after that date.

The claimant applied to the Industrial Commission for compensation and was awarded the same out of the State Insurance Fund for one month at which time the Commission found that the award had been made in error the employer having no coverage. The claim was then transferred to Section 27. An award was made in favor of the claimant on March 14, 1923, and another on April 12, 1923. Claimant was paid compensation by the employer in the sum of $949.14; last compensation paid was in February, 1924.

The claimant died on March 24, 1924, as a result of his injury. On April 4, 1924, the Commission made a death award in the sum of $5,107.41 which constituted the amount still due after making a deduction for compensation already paid. A further award of $1,075.71 for nursing services and an additional sum of $1,523.28 covering expenses for hospital, medical and medical supplies was also made. This award carried with it a penalty of fifty per cent because of non-payment.

The claim was certified to the Attorney General for collection. A judgment was obtained on Sept. 12, 1924, in the sum of $9,413.99. Execution was issued and returned unsatisfactory for want of goods or property on which to levy and writ issued in aid of execution revealed bonds belonging to the defendant corporation in the amount of $78,000.00. These bonds were seized by the sheriff of Cuyahoga County and several efforts were made to sell them all efforts having proved unsuccessful. The bonds are virtually worthless. There have been no bidders for the same when the same were put up for sale.

On June 11, 1928, the Commission certified the claim as uncollectible. The widow has now applied to the Industrial Commission to have the award less the penalty paid from the surplus fund. The Commission desires your opinion on the question of whether or not payment of this award can be made out of the surplus fund, as provided in Sections 1465-74 and 1465-75, G. C.

Your attention is directed to the provisions of Paragraph 9 of Section 1465-75 which provides that 'the payment of the premium for such period shall entitle employes of such employer to the compensation and benefits provided by this act for injuries, occupational diseases or death suffered during such period, but any claim for injury or disease, or injury or disease resulting in death, suffered during such period, shall be determined as if the same had been filed under the provisions of Section 1465-74, and shall be paid from the state fund in like manner as other awards. * * * '

The facts in the case heretofore set out show that the injury occurred on October 5, 1922. The death occurred on March 24, 1924. Since the death occurred after Jan. 1, 1923, the effective date stipulated in the statute, and the

injury occurred prior thereto, is the widow entitled to the benefits of the statute?"

The judgment to which you refer was obtained by virtue of an award made under Section 1465-74, General Code, which provides for the Industrial Commission determining the amount of compensation due an employe from an employer who has not paid premiums into the state insurance fund as provided by the Workmen's Compensation Act. You wish to know whether or not this judgment shall be paid from the state insurance fund.

Section 1465-74, referring to judgments so obtained, reads in part as follows:

> "The payment of any judgment recovered in the manner provided herein shall entitle such claimant to the compensation provided by this act for such injury, occupational disease or death. The attorney general shall, as soon as the circumstances warrant, and not more than two years after the date of such award made by the commission, certify to the commission the result of his efforts to recoup the state insurance fund as herein provided, and if he certifies that such award cannot be collected in whole, the award shall be paid from the surplus created by Section 1465-54, and any sum then or thereafter recovered on account of such award shall be paid to the commission and credited to such fund as the commission may designate."

The section as it now reads was contained in the act passed by the General Assembly as found in 111 Ohio Laws, page 222, which act amended Sections 1465-74 and 1465-75, General Code.

In considering those sections the Supreme Court said:

> "The scheme of compensation thereby adopted and embraced in the two sections relates to the payment of compensation out of the surplus fund in cases where the employer has not complied with the compensation laws in respect to the payment of premiums."
>
> *State, ex rel. Davis* vs. *Industrial Commission* 118 O. S. 340 (343).

Section 1465-75, General Code, provides in part:

> "If the industrial commission finds that any person, firm or private corporation, including any public service corporation is, or has been at any time after January 1, 1923, an employer subject to the provisions of paragraph 2 of Section 1465-60, it shall determine the period during which he or it was such an employer, etc. * * * "

The section then provides for the procedure relative to collecting premiums from the employer, including the appointment of a receiver. It further provides:

> "The payment of premiums for such period shall entitle the employes of said employer to compensation and benefits provided by this act for injuries, occupational diseases, or death suffered during said period, but any claim for injuries, or disease, or injury or disease resulting in death, suffered during such period, shall be determined as if the same had been filed under the provisions of Section 1465-74, etc. * * * "

The said section further provides that said award

> "shall be paid from the state fund in like manner as other awards,".

It is quite significant to note the language used in this portion of the section. The period referred to in the first sentence is the period after January 1, 1923, and the period during which said employer was amenable to the act as found by the Industrial Commission.

It will next be noted that the language provides that the employe may be paid compensation and benefits "for injuries, diseases or death" suffered during said period, meaning the period as above stated, and then says that any claim for "injuries or disease, or injuries or disease resulting in death" shall be determined as though it had been filed under Section 1465-74, General Code.

I believe that the language of the two phrases are identical. When considering this language in connection with the general scheme of the compensation law, I am of the opinion that said language means that the injury resulting in death must have occurred during the period in question. The fact that death resulted during said period, although the injury which caused the death was not suffered during that time, is not sufficient.

This brings us to a consideration of the further provision of said section, reading as follows:

> "The attorney general shall, as soon as the circumstances warrant, and not more than two years after the date of such finding of the commission, certify to the commission the result of his efforts to collect the amount of the premium found to be due from such employer and if he certifies that the amount found by the commission cannot be collected in whole, compensation for injuries, diseases, or death suffered during the period covered by such finding, shall be paid from the surplus created by Section 1465-54, and any sum then or thereafter recovered on account of such finding shall be paid to the commission and credited to such fund as the commission shall determine."

This is the portion of the section which authorizes the payment of the compensation from the surplus fund and it uses the same language used in the first instance in the last above quoted portion of the section, to-wit:

> "injuries, diseases or deaths suffered during the period covered by such finding,"

The Legislature used this language and intended it to have the same meaning as the like language used in the preceding paragraph.

In the question presented by you the employe was injured on October 5, 1922, and his death occurred on April 4, 1924.

It is true that the right of the wife, who was dependent upon her deceased husband for support, did not come into existence until the time of the death of her husband. The Supreme Court said in the case of *Industrial Commission* vs. *Kamrath,* 118 O. S. 1:

> "The cause of action of a dependent of a killed employe accrues at the time the employe dies from an injury received in the course of his employment."

The amount of compensation which she shall receive is governed by the provisions of the law at the time the death ccurred. However, it does not necessarily follow that all of her rights are regulated or controlled by the law in effect at the time her right comes into existence.

Our Workmen's Compensation Act became effective January 1, 1914. No one has contended that a widow had a right to participate in the state insurance fund on account of the death of her husband caused by injuries received prior to the effective date of the act, that is, prior to January 1, 1914.

Construing the two sections in question, the Supreme Court of Ohio in the case of *State, ex rel. Williams* vs. *Industrial Commission,* 116 O. S. 45, held that

> "The amended relief Section 1465-75, General Code, evidently extends relief to those employes of employers who were such on or 'at any time after January 1, 1923.'"

It is true that in that case the court was not giving consideration to such a question as the one before us and no further discussion of the section was had in the opinion, save and except as to the constitutionality thereof. I believe the statement is a correct statement of the provisions of the act.

The language of Section 1465-75, General Code, which gives rise to the inquiry made herein is evidently that portion which provides that the amount of compensation found due, and which could not be collected in whole or in part, and which compensation is for injuries, diseases, or death suffered during the period, etc., should be paid from the surplus fund.

It is quite apparent that the deceased husband could not have received compensation from the state insurance fund by virtue of said section because his injury did not occur after January 1, 1923. It was this injury which resulted in his death and there is no statutory provision for paying compensation in such cases unless it could be said that the above quoted sections so authorize, in case the death occurred after January 1, 1923. That would give an unequal operation to the statute because the widows of claimants who were injured at the same time the deceased in this case was injured, and died as a result thereof previous to January 1, 1923, would have no relief under said section but the widows or dependents of those who lived until after January 1, 1923, would have such right. I do not believe that such was the intention of the Legislature.

The amendments to Sections 1465-74 and 1465-75 did not become operative until July 14, 1925, and yet, by virtue of the language used, as construed by the Supreme Court in the Williams case, supra, it was made retroactive; in other words it was so framed as to give rights to conditions existing more than two years previous thereto.

While this question is not discussed by the Supreme Court in the cases herein referred to, I do not believe that the statute should be given any broader interpretation than has already been given it by that court.

What is said by the Supreme Court relative to Section 1465-75, General Code, has been made applicable to Section 1465-74, General Code, by the interpretation thereof by the Supreme Court in the Davis case, supra.

In any event, in this matter the employe was not injured after January 1, 1923, neither did his death occur during such time as the employer was an employer subsequent to January 1, 1923. Therefore, neither the death nor the injury occurred at such time when the employer was an employer within the meaning of the Workmen's Compensation Act.

I am, therefore, of the opinion that the provisions of Sections 1465-74 and 1465-75, General Code, relating to the payment of compensation to be paid from the surplus fund created by Section 1465-54, General Code, are not applicable to the judgment for compensation of dependents of employes who died subsequent to January 1, 1923, as a result of injuries received prior to said date.

Respectfully,
GILBERT BETTMAN,
Attorney General.