OPINION NO. 73-092

Syllabus:

1. A mentally retarded trainee of an Adult Training Center who receives compensation for services rendered is entitled to the benefits and protection of the workmen's compensation statutes.

2. The nonprofit corporation, which is created to secure jobs for the mentally retarded trainees, is the employer of such trainees and is, therefore, required to provide the benefits of workmen's compensation to its employees.

To: Robert J. Huffman, Miami County Pros. Atty., Troy, Ohio
By: William J. Brown, Attorney General, September 17, 1973

I have before me your request for my opinion which reads as follows:

> The Riverside Adult Training Center is a vocational training program operated by the Miami County Board of Mental Retardation through sections 5127.01, 5127.02, 5127.03, 5127.04, 5153.11, 5705.19, 5126.01, 5126.02, 5126.03, and 5126.04 of the Revised Code of Ohio.
>
> It is the purpose of this program to educate and train the mentally retarded adult so that he may maximize his potential to compete for gainful community employment and become as self-sufficient as possible within his personal life style. More specifically, the program offers the adult retardate education and training in the following areas: acceptable and non-acceptable adult social behavior, self-care skills, personal health and hygience, community life orientation, occupational orientation, occupational socialization, and community job placement.
>
> Each client in the center received a small bi-weekly remuneration in the form of a payroll check. The check is issued the client for the purpose of developing awareness and understanding concerning his personal management of money and also the check is used as a behavior modification device to develop motivation and incentive in each client so that he may reach his ultimate goal of self-sufficiency. These checks range from Five Dollars to Twenty-Three Dollars per week.
>
> Your opinion is respectfully requested on the following questions: Are such clients employed within the purview of the Ohio Workmen's Compensation statutes; if so, to whom do they render services, and finally, is the Miami County Board of Mental Retardation the entity legally responsible to provide Workmen's Compensation benefits to the students enrolled in the Riverside Adult Training Center.

R.C. 5126.03, which sets forth the powers and duties of a county board of mental retardation, reads in part as follows:

> The county board of mental retardation, subject to the rules, regulations, and standards of the commissioner of mental retardation shall:
>
> (A) Administer and supervise facilities, programs, and services established under section 5127.01 of the Revised Code and exercise such powers and duties as prescribed by the commissioner;
>
> (B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the

Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other time as may be requested;

(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

(D) Provide such funds as are necessary for the operation of facilities, programs, and services established under section 5127.01 of the Revised Code.

R.C. 5127.01, referred to in the foregoing statute confers upon the Director of Mental Health and Mental Retardation the power to establish training centers, workshops and residential centers for the mentally retarded in any county or district.

In order to properly determine whether persons participating in these training centers are entitled to the benefits and protection of workmen's compensation, it is necessary to examine the precise nature of such training centers. R.C. 5127.01, which sets forth the definition of a mentally retarded person for the purposes of R.C. Chapter 5127., reads in part as follows:

As used in sections 5127.01 to 5127.04, inclusive, of the Revised Code, a "mentally retarded person" means:

(A) A person who has been determined by the proper authorities to be ineligible for enrollment in a public school because of mental retardation of such nature and to such degree that the person is incapable of profiting substantially by any educational program which should be provided by such public school;

(B) If not of school age, a person who has been determined by the proper authorities to be unemployable because of mental retardation to such nature and to such degree that special training is necessary. The nature and degree of mental retardation shall be determined in the manner prescribed by the commissioner.
(Emphasis added.)

R.C. 5127.02, which establishes the procedures required for the creation of such training centers for the mentally retarded, reads as follows:

Upon petition to the county board of mental retardation in any county by the parents or guardians of eight or more mentally retarded persons of similar handicap who are ineligible for enrollment in public school because of age or mental retardation, the board shall forward such petition to the commissioner of mental retardation. The commissioner shall take such action and make such order as he deems necessary for the special training of the mentally retarded, to the extent that funds are available. (Emphasis added.)

It is apparent, therefore, that this statute refers to a special portion of this state's mentally retarded population. The State Board of Education, pursuant to R.C. 3321.01 and 3323.01, is required to educate those mentally retarded persons deemed educable. It is the duty of the County Board of Mental Retardation, however, to administer and supervise training centers for those mentally retarded persons deemed trainable. This latter group includes those persons who have been adjudged ineligible for enrollment in the public schools but capable of profiting from specialized training. The necessarily different types of education to be afforded to the mentally retarded who are trainable, and to those who are educable and capable of attending the public schools, has been recognized in several Opinions issued by this office. See Opinion No. 73-014, Opinions of the Attorney General for 1973; Opinion No. 73-019, Opinions of the Attorney General for 1973.

The training centers provided for the trainable mentally retarded are of three types--community classes, workshop programs, and adultactivity centers. The workshop program, which is the subject of this request, is basically an attempt to provide a sheltered workshop for adolescent and adult retarded persons. According to Rule MWh-1-18 of the Department of Mental Hygiene and Correction, Division of Mental Retardation, Rules, Regulations and Standards for the Establishment and Operation of Programs for Training the Mentally Retarded, a retarded person, in order to be eligible for a workshop program, must be at least 16 years of age and have a minimum development level equal to that of an average five year old child.

Rule MWh-1-25 provides for the creation of a nonprofit corporation for the purpose of securing remunerative employment for the workshop trainees. The work is generally procured by the nonprofit corporation through contracts entered into with private businesses. The trainees are, pursuant to Rule MWh-1-21, paid for the work they accomplish, either on a piece or an hourly basis, in accordance with the Federal Wages and Hours Act. According to Rule MWh-1-24, however, a total reimbursement is not to exceed $300.00 per year.

It is clear, therefore, that these workshops were created solely for the purpose of educating and training mentally retarded adults. They are designed to teach such persons self-help skills and social behavior skills. Furthermore, these programs teach such persons an awareness and an understanding of the uses and management of money.

As would be expected, these programs are not self-sustaining. In Opinion No. 2787, Opinions of the Attorney General for 1962, my predecessor, in concluding that a training center could not charge fees or tuition for participation in the benefits of such programs, stated in the syllabus as follows:

> A county child welfare board operating a training center or workshop for mentally deficient persons pursuant to Chapter 5127. and Section 5153.161, Revised Code, is without authority to require that persons over twenty-one years of age pay tuition as a condition of enrollment in such center or workshop.

It should be noted, however, that in this state the trainee's status as a ward of the county is not at all determinative of his eligibility to receive the benefits of workmen's compensation.

Although courts in other states have resolved the problem differently, the Supreme Court of Ohio, in the case of Industrial Commission v. McCharter, 129 Ohio St. 40 (1934), in concluding that a work-relief employee was entitled to receive workmen's compensation benefits, stated at 45 as follows:

> Emphasis is laid upon the fact that claimant was an object of the city's bounty, a ward, a charge. It is contended that the relationship between the workman and the city was due to circumstances and not the result of free, mutual contract. It is stated that there is no distinction between those who receive direct relief. It seems much more reasonable, however, to distinguish between those who work for their support and those who do not work for their support, than to distinguish between laborers engaged in the same work, paid at the same rate, some of whom are employed directly by the city and some indirectly through the relief agency. All those who labor at the same work should receive the same wages and the same benefits. The city received the services upon its promise to pay at a definite rate. It had the right to reject the services, to discontinue the work. It directed where and how the work should be performed.
>
> (Emphasis added.)

Subsequent to the foregoing decision, however, the legislature enacted R.C. Chapter 4127., entitled Public Works Relief Compensation, with the express purpose of excluding certain groups from workmen's compensation benefits. R.C. 4127.01, which sets forth the definition of an employee for the purposes of this Chapter, reads as follows:

> As used in sections 4127.01 to 4127.14, inclusive, of the Revised Code:
>
> (A) "Work-relief employee" means any person engaged in any public relief employment, and receiving "work-relief," who is under the supervision and control of any employer mentioned in this section or any agency of such employer.
>
> Persons, or the dependents or persons, who are engaged in any relief employment for any employer not mentioned in sections 4127.01 to 4127.14, inclusive, of the Revised Code, and receiving funds or goods or any other thing of value, in exchange for any such service or labor, are not entitled to the benefits of such sections or sections 4123.01 to 4123.94, inclusive, of the Revised Code.
>
> (B) "Work-relief" means public relief given in the form of public funds or goods, on the basis of the budgetary needs of the work-relief employee and his dependents, in exchange for any service or labor rendered on or in connection with any public relief employment.

(C) 'Employer' means each county, municipal corporation, township, school district, the state, and the state relief commission or any other state agency having supervision or control of work-relief employees, either directly or through agencies. (Emphasis added.)

It is to be noted, however, that the foregoing statute is of limited application. "Work-relief" is specifically limited to compensation given on the basis of the budgetary needs of the work-relief employee and his dependents.

In contrast, the mentally retarded trainee receives, in this instance, compensation primarily for purposes of education and training, in productive labor, for the purpose of making him as self-supporting as possible. His weekly stipend bears no relation to his budgetary needs. It is clear, therefore, that a mentally retarded participant in the type of training center herein described cannot be classified as a work relief employee under R.C. Chapter 4127.

In order to receive benefits under workmen's compensation, however, it is necessary that such person qualify as an employee under R.C. Chapter 4123.

R.C. 4123.01, which defines an employee for the purposes of workmen's compensation, reads in part as follows:

As used in sections 4123.01 to 4123.94, inclusive, of the Revised Code:

(A) 'Employee,' 'workman,' or 'operative' means:

(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and whenever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education; * * *

(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, but not including any person whose employment is casual and not in the usual course of trade, business, profession, or occupation of his employer, or (b) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the

premiums provided by sections 4123.01 to 4123.94, inclusive, of the Revised Code. (Emphasis added.)

It is immediately apparent that the statute provides protection for a rather broadly defined class of persons. In addition, Substitute House Bill No. 417, signed by the Governor of August 17, 1973, amends R.C. 4123.01 so as to extend coverage to an even broader group of persons including household workers, certain casual workers, and all persons working for employers with one or more regular employees.

The Workmen's Compensation Act was enacted for the purpose of providing a state insurance fund for the benefit of injured employees and the dependents of those persons killed in the course of employment. Coviello v. Industrial Commission of Ohio, 129 Ohio St. 580 (1935).

Moreover, it has been recognized that the workmen's compensation statutes are to be construed in favor of claimants. See Industrial Commission v. Rogers, 34 Ohio App. 196 (1929). Finally, R.C. 4123.95, which expressly requires a liberal construction of the workmen's compensation statutes, provides as follows:

> Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees.

Thus, I should favor a construction which causes a trainee of the type herein described to be included within the definition of an "employee," "workman," or "operative" as set forth in R.C. 4123.01.

It should also be noted that Rule MR-1-25(C) provides that mentally retarded persons working in the sheltered employment phase of the workshop program are to be afforded the protection of the workmen's compensation statutes. Although this rule is not legally conclusive, it does indicate that those officials responsible for the administration of programs created under the auspices of the county boards of mental retardation did intend to extend coverage to the trainees in such programs.

Admittedly, there are circumstances that set a trainee of an adult training center apart from most of the other persons included within the statute. Yet, these differences do not, in my opinion, preclude the applicability of the workmen's compensation statutes to such a trainee. The special circumstances involved in this particular situation are, in large part, collateral to the basic issue of employment. Neither the status of the employee, his motives for performing the work, nor the conditions under which he works, affect the basic fact that he is rendering valuable services and is being compensated for so doing. This is sufficient to place such a trainee within the broad sweep of the workmen's compensation statutes.

My predecessor, in Opinion No. 2537, Opinions of the Attorney General for 1947, in concluding that an "on-the-job" trainee who was a disabled veteran receiving some compensation for services rendered was, nevertheless, entitled to the benefits and protection of workmen's compensation, stated at page 631 as follows:

> Certainly any veteran who, while engaged in on-the-job training receiving compensation for

services rendered to his private employer is "in the service of any person, firm, or private corporation if such person, firm or private corporation employs three or more workmen and is otherwise amenable to the workmen's compensation law. Of course, it would appear obvious that the compensation and benefits payable on account of injury or death of such veteran under Ohio workmen's compensation law should be calculated on the basis of his average weekly wage as paid by the employer, excluding subsistence allowances paid by the Federal Government.

It is, of course, true that in order for an employer-employee relationship to exist for the purposes of workmen's compensation, there must be a "contract of hire." The Supreme Court of Ohio, in the case of Coviello v. Industrial Commission of Ohio, supra, setting forth the essential elements of a "contract of hire", stated in the syllabus as follows:

* * * * * * * * *

3. To constitute the relationship of employer and employee under the Workmen's Compensation Law there must be a contract of hire express or implied.

4. The definition of "hire" applicable is: The price, reward or compensation paid for personal service or for labor.

5. It is impossible to have a "contract for hire" without an obligation that the person denominated the employer pay the person employed.

Thus, the foregoing opinion establishes that, for purposes of the workmen's compensation statutes, the employee-employer relationship must arise under a contract which obligates the employer to pay compensation to the employee for his labor.

I think it clear that a trainee in the type of workshop herein described, is an employee under a "contract for hire." Such a trainee certainly receives compensation from the non-profit corporation for the personal services he renders. Moreover, the courts have held that although some price, compensation or reward is, except in limited instances involving volunteer policemen and firemen, necessary to the existence of a "contract for hire," the adequacy of such compensation is unimportant. See Industrial Commission v. Rogers, 122 Ohio St. 134 (1930). The fact that the trainees receive only nominal compensation for their services, therefore, is immaterial.

Although the facts do not disclose whether the trainees in this particular instance are performing services under an express contract, the circumstances clearly indicate the existence of an implied contract for hire.

The Supreme Court of Ohio, in the case of Drevel v. Lahay, 155 Ohio St. 244 (1951), in holding that one rendering services to another could, even in the absence of an agreement relating to payment, still be under an implied contract of hire, stated at 248 as follows:

Ordinarily, where one person renders services at another's request and there is no express agreement relative to payment therefor, the person rend-

> ering the services may recover for the reasonable value thereof. In such an instance, recovery is allowed because the trier of the facts may fairly infer, as a matter of fact, that a contract existed between the parties under which one was to pay a reasonable amount for the services rendered by the other.

It should be further noted that the fact that the trainees in the present situation are mentally impaired is not sufficient to prevent them from entering into a contract on the basis of incapacity. Monroe v. Shrivers, 29 Ohio App. 109 (1927).

Finally, the conclusion reached in Opinion No. 2313, Opinions of the Attorney General for 1961, has no bearing upon the issue at hand. In concluding that an inmate of a county home who was required to perform reasonable and moderate labor without compensation was not eligible for workmen's compensation benefits, my predecessor stated at page 341 as follows:

> Under the Workmen's Compensation Act, Section 4123.01, et seq., Revised Code, every person in the service of any county under any appointment or contract of hire is defined as an 'employee' of the county for the purpose of receiving compensation for an injury received in the course of, and arising out of, the injured employee's employment. Although the language of the Workmen's Compensation Act is very broad and should be liberally construed in favor of the claimant, (Industrial Commission v. Rogers, 34 Ohio App. 196 (1929)), I have been unable to find any case in which an inmate of a county home performing labor without compensation pursuant to Section 5155.06, supra, has been held to be an employee of a county under the provisions of this act.

The foregoing opinion precluded these inmates from the benefits of the workmen's compensation statutes because they received no payment for the services rendered, and, subsequently, could not be classified as employees under R.C. 4123.01. It is obvious, therefore, that the conclusion reached in Opinion No. 2313, supra, has no bearing upon the proper disposition of the situation at hand.

In light of the foregoing, therefore, I think it clear that a mentally retarded trainee of an Adult Training Center who renders valuable services for compensation is an employee under a "contract for hire" and is, consequently, within the purview of the workmen's compensation statutes.

Moreover, I think it fairly obvious that the nonprofit corporation is the employer of these trainees and is, consequently, required to provide them with workmen's compensation. In setting forth the appropriate test to be used in determining whether one who renders services to another is an employee, who is entitled to the benefits of workmen's compensation, or merely an independent contractor who is not entitled to such benefits, the Supreme Court, in the case of Councell v. Douglas, 163 Ohio St. 292, 295 (1955), stated as follows (quoting from Miller v. Metropolitan Life Ins. Co., 134 Ohio St. 289, 291 (1938)):

> The relation of principal and agent or master and servant is distinguished from the relation of employer and independent contractor by the following test: Did the employer retain control or the right to control the mode and manner of the work contracted for? If he did, the relation is that of principal and agent or master and servant. If he did not but is interested merely in the ultimate result to be accomplished, the relation is that of employer and independent contractor.

It would, upon first impression, appear that under the foregoing test the county board of mental retardation would qualify as the proper employer for it is the county board which, pursuant to Rule MRh-1-23, is required to maintain the facility and staff of the workshop. Yet, upon closer examination, it appears clear that the trainees are employees of the nonprofit corporation and not the county board of mental retardation. Although the facts do not disclose whether the nonprofit corporation does in fact exercise control over the activities of the trainees, it is apparent that they possess the right to do so. Rule MRh-1-25(D) (2) provides that the nonprofit corporation shall purchase the supplies and machinery necessary to fulfill the contract with private firms. It is obvious that a proper corollary of this power to purchase necessary machinery and supplies is the power to control the mode and manner of the employment.

In addition, the fact that the trainees, pursuant to Rule MRh-1-25 (D)(3), receive payment for services rendered from the nonprofit corporation lends further support to the proposition that the trainees are employees of the nonprofit corporation. The Supreme Court of Ohio in the case of Industrial Commission of Ohio v. Chaney, 127 Ohio St. 366, 368 (1933), in discussing the evidentiary value of the mode and source of payment in establishing the employer-employee relationship, stated as follows:

> The general rule is that the matter of compensation is not usually decisive of the relationship of employer and employee, but the manner and source of payment for services is a circumstance entitled to weight in a case of doubt and may sometimes determine the question.

Finally, it should be noted that Rule MRh-1-25(F) provides that all clients shall be the employees of the nonprofit corporation. Although this rule is not legally binding, it evinces an intention on the part of the Commissioner of Mental Retardation to organize these programs in such a manner that the nonprofit corporation will be responsible as the employer of the trainees.

In light of the foregoing, therefore, I think it clear that the nonprofit corporation is the employer of the workshop trainees and is, consequently, required to provide workmen's compensation benefits for such trainees.

In specific answer to your questions, it is my opinion and you are so advised that:

1. A mentally retarded trainee of an Adult Training Center who receives compensation for services rendered is entitled to the benefits and protection of the workmen's compensation statutes.

2. The nonprofit corporation, which is created to secure jobs for the mentally retarded trainees, is the employer of such trainees and is, therefore, required to provide the benefits of workmen's compensation to its employees.