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ELEVATORS—WHERE A COMPANY AUTHORIZED TO INSURE ELEVATORS IN OHIO DESIGNATES A PERSON HOLDING CERTIFICATE OF COMPETENCY TO INSPECT ELEVATORS COVERED BY COMPANY'S POLICIES, SUCH PERSON UPON PAYMENT OF ONE DOLLAR FEE, ENTITLED TO ISSUANCE OF COMMISSION, SPECIAL INSPECTOR OF ELEVATORS, STATE OF OHIO—EMPLOYEE OF INSURANCE COMPANY—CONTRACT—INSURANCE COMPANY TO FURNISH INSPECTION SERVICE.

SYLLABUS:

Upon payment of a fee of one dollar, a person holding a certificate of competency in the inspection of elevators, who is designated by a company, authorized to insure elevators in Ohio, to inspect elevators covered by such company's policies, is entitled to have issued to him a commission to serve as a special inspector of elevators in the State of Ohio, irrespective of the facts that such person is not an employe of the insurance company and is an employe of some other company which has contracted with the insurance company to furnish inspection service.

Columbus, Ohio, March 27, 1943

Hon. George A. Strain, Director of Industrial Relations,
Columbus, Ohio.

Dear Sir:

You have requested my opinion as follows:

“Under section 1038-1 to section 1038-24 of the General Code, State of Ohio, both inclusive, it being the Elevator Act,

a general elevator inspector is defined as one hired and examined to inspect elevators for the State of Ohio. A special inspector is one examined and commissioned by the Chief of the Division of Factory and Building Inspection (which is now the Division of Elevator Inspection) to inspect elevators of this State, which includes those inspectors who are duly commissioned and designated by insurance companies to inspect elevators covered by their policies.

The question and problem which this department is confronted with is: WHETHER SUCH A SPECIAL INSPECTOR, DESIGNATED BY AN INSURANCE COMPANY, MUST BE AN EMPLOYEE OF THAT COMPANY?

To be more specific, if an inspector designated by an insurance company is employed by another company which contracts with insurance companies to furnish inspection service, and the salary or salaries are paid to such inspector or inspectors, is such practice permissible under the Elevator Inspection Laws of Ohio?"

Section 1038-1, General Code, inter alia, provides that for the purposes of the Elevator Inspection Act (Sections 1038-1 to 1038-24, inclusive, General Code):

" 'General inspector' shall mean a state inspector examined and hired to inspect elevators and lifting apparatus for the state of Ohio.

'Special inspector' shall mean an inspector examined and commissioned by the chief of the division of factory and building inspection to inspect elevators and lifting apparatus in the state of Ohio."

Sections 1038-4, 1038-5 and 1038-6, General Code, respectively provide:

Section 1038-4.

"No person shall be authorized to act, either as a general inspector or a special inspector, of elevators, unless he holds a certificate of competency from the department of industrial relations, as provided for in paragraph 2 of section 4 of this act.

Application for examination as an inspector of elevators shall be in writing, accompanied by a fee of ten dollars, upon a blank to be furnished by the department, stating the school education of the applicant, a list of his employers, his period of employment, and the position held with each. He shall also submit

a letter from one of more of his previous employers certifying as to his character and experience.

Applications shall be rejected which contain any wilful falsification or untruthful statements. Such applicant, if the department deem his history and experience sufficient, shall be examined by the department, by a written examination dealing with the construction, installation, operation, maintenance and repair of elevators and their appurtenances, and the applicant shall be accepted or rejected on the merits of his application and examination.

There shall be issued by the department to any applicant found competent upon examination, a certificate of competency in the inspection of elevators. A rejected applicant shall be entitled, after the expiration of ninety days, and upon payment of an examination fee of ten dollars, to another examination. Should an applicant fail to pass prescribed examination on second trial, he will not be permitted to be an applicant for another examination, for a period of one year after the second failure."

Section 1038-5.

"The chief of the division of factory and building inspection, with the consent of the director of industrial relations, and in compliance with the civil service laws of Ohio, may appoint and hire from the holders of certificates of competency, not to exceed eight general inspectors of elevators for the state of Ohio."

Section 1038-6.

"From the holders of certificates of competency in the inspection of elevators, any company, which is authorized to insure elevators in the state of Ohio, may designate persons to inspect elevators covered by such company's policies, and the department of safety of any city and the clerk of any village may designate persons to inspect elevators in such city or village. Such persons shall, upon the payment of a fee of one dollar, have issued to them annually by the division of factory and building inspection, commissions to serve as special inspectors of elevators in the state of Ohio.

Special inspectors shall not be compensated by the state."

You will note that Section 1038-6, General Code, provides that any company which is authorized to insure elevators in the State of Ohio may designate persons from the holders of certificates of competency to inspect elevators covered by such company's policies, and that persons so designated shall have issued to them commissions to serve as special in-

spectors of elevators in the State of Ohio. Nothing in this section or in any of the other provisions of the act requires that the persons designated by insurance companies to serve as special inspectors must be employes of the insurance company nor is there anything in the act which prohibits such persons from being employes of another company which contracts with the insurer to furnish inspection service.

In other words, in order for a person to be a special inspector, only three requirements must be met, viz., (1) such person must hold a certificate of competency in the inspection of elevators issued pursuant to Section 1038-4, General Code; (2) such person must be designated by a company authorized to insure elevators in the State of Ohio or by the proper officers of some municipal corporation, and (3) the fee of one dollar must be paid. The law imposes no other requirements and under the well settled rule that administrative officers have such powers only as are expressly given to them by law and such additional implied powers as are necessary to carry into effect the express powers, you are not authorized to impose additional requirements in your administration of the law.

For these reasons, you are advised, in specific answer to your question, that, upon payment of a fee of one dollar, a person holding a certificate of competency in the inspection of elevators, who is designated by a company, authorized to insure elevators in Ohio, to inspect elevators covered by such company's policies, is entitled to have issued to him a commission to serve as a special inspector of elevators in the State of Ohio, irrespective of the facts that such person is not an employe of the insurance company and is an employe of some other company which has contracted with the insurance company to furnish inspection service.

Respectfully,

THOMAS J. HERBERT,
Attorney General.