

2110.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
HURON, PREBLE AND OTTAWA COUNTIES, OHIO.

COLUMBUS, OHIO, May 26, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

2111.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, ERIE
AND LOGAN COUNTIES, OHIO.

COLUMBUS, OHIO, May 26, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

2112.

INDUSTRIAL COMMISSION OF OHIO—AWARD PAID TO INJURED
WORKMAN—COMMISSION NOT WARRANTED IN REIMBURSING
EMPLOYER FOR MONEY PAID BY IT TO SAID INJURED EMPLOYEE.

When the Industrial Commission of Ohio has awarded and paid to an injured workman compensation on account of such injury, it is not warranted in reimbursing the employer for money paid by it to said injured employe.

COLUMBUS, OHIO, May 26, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge the receipt of your request for the opinion of this department upon the question as to whether or not

“the commission would be warranted in reimbursing the employer for the amount of two checks sent to the employe and which said employe * * * accepted after having made * * * assignment to the employer.”

A brief statement of the facts as shown by the file in question, being claim No. 742331, shows that the employe was injured on March 6, 1920, and filed a notice thereof with your commission on May 17, 1920, upon blanks for the purpose of paying medical expenses only. Later, on May 28th, he filed a supplemental application asking for compensation for loss of time and one-half loss of thumb on account of said injury, which claim was heard by your commission on June 7th, at which time compensation for temporary total disability was allowed for a period of eight and one-seventh weeks at the rate of \$15.00 per week, or a total of \$122.14. This paid compensation for

total disability until May 9, 1920. At said time the commission also allowed compensation for a period of thirty weeks at the rate of \$12.00 per week commencing May 10, 1920, for permanent partial disability for one-half loss of thumb. The evidence also shows that previous to June 7th the employer had advanced to the employe \$512.00 and received the following assignment from him, to-wit:

"June 1, 1920.

The Industrial Commission of Ohio, Columbus, Ohio.

In consideration of five hundred and twelve dollars (\$512.00) received to my full satisfaction I hereby sell, assign and transfer to The Hunt & Dorman Manufacturing Company, all my right and title to compensation under claim No. 742331."

This assignment was mailed to you on June 1, 1920, and was received in the department of claims on June 4th, but was not placed with the file of the case until after June 7th for the reason that the same was in process of preparation for hearing.

Upon the commission's order of June 7th, the auditor drew a warrant in favor of the employe for the sum of \$122.14 and another one for \$72.00 for the permanent partial disability award and forwarded them to the employe, and they were cashed by him.

It is also noted that you have ordered all the balance of the award to be paid to the employer, and you desire the opinion of this department as to whether or not the employer should be paid the sum of \$194.14, which amount has already been paid out of the fund to the employe.

Attention has been called to the case of *State ex rel. Lang vs. Industrial Commission et al.*, 98 O. S. 459. The question for consideration was whether the employer, who had advanced money to the injured employe, was entitled to be reimbursed out of the award still in the hands of the Industrial Commission. In that case the award had been made in favor of the injured employe, and the Industrial Commission being advised that there had been advancements made by the employer the warrant for the amount of the award was sent to the employer so that it could be endorsed by the injured employe and the employer receive the amount to apply upon the advancements. The injured employe refused to endorse the warrant and the same was never cashed, and the injured employe brought an action in mandamus against the Industrial Commission for the purpose of collecting the amount of the award. The Industrial Commission answered setting forth the facts and asked that the employer be made a party and that the court direct that the money be paid to the proper parties. The employer was made a party defendant and filed an answer, and also requested that the Industrial Commission be ordered to pay the amount of the award theretofore made and unexpended to it on account of the advancements made. The supreme court denied the writ to the employe and granted the writ prayed for by the employer.

Section 1465-88 G. C. provides:

"Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution and shall be paid *only to such employes or their dependents.*" (Underscoring mine).

At first it might seem that the case of *State ex rel. Lang vs. Industrial Commission, supra*, would indicate that assignments and rights of creditors should be recognized, but since there was no assignment involved in that case we feel that the supreme court based its action on the theory that the employer in

advancing compensation from time to time was acting in behalf of the Industrial Commission, and it was reimbursed out of unexpended funds in the hands of the Commission on account of the award, by virtue of its action for the Commission. That case was decided without any reference to any assignment or legal title which the employer received from the employe.

Section 1465-72 G. C. also provided that :

“The state liability board of awards (now the Industrial Commission) shall disburse the state insurance fund to such *employes* of employers * * * who have been injured in the course of their employment * * *.”

It is also noted by an examination of section 1465-68 that such compensation shall be for loss sustained, as is shown by the following language :

“Sec. 1465-58. * * * Every employe * * * who is injured * * * shall be entitled to receive * * * such compensation for loss sustained on account of said injury * * *.”

This clearly shows that the Industrial Commission has authority only to pay compensation for loss sustained on account of any injury. In this particular case, as has been determined at this time, the loss sustained up to and including the date of the award was \$194.14, plus an additional loss of \$288.00, which amount was to be paid to the injured employe in bi-weekly installments.

This latter sum is to be paid to the employer, so after it has been disbursed the Industrial Commission will have paid all compensation from the fund which is authorized by law.

It is a well recognized principle that no money can be paid out of the public treasury without specific authority of law. It is true the state insurance fund is not part of the public treasury, but it is a trust fund created by law and can only be disbursed in the manner provided by the act creating the fund.

Since there was only \$194.14 due at the time of the hearing before the Industrial Commission, and considering the fact that \$512.00 had been paid to the injured employe previous to that time, it is very clear that the said employer had paid more than was due the employe at the time payment was made, and if such a right could be recognized it would be a means of nullifying section 1465-87, which is as follows :

“The commission, under special circumstances, and when the same is deemed advisable, may commute payment of compensation or benefits to one or more lump sum payments.”

The supreme court has held that no one but the commission has authority to make or commute lump sum payments.

“It is clearly the design of the legislature that lump sums are to be the exception and not the rule * * *.”

Roma vs. Industrial Commission, 97 O. S. 247.

It is to be observed that the matter of commutation is wholly within the discretion of the Board of Awards and is to be granted only in instances of special circumstances.

If the court in a case properly before it had no authority to award com-

pensation in a lump sum, surely the employer or any other person could not do that which the court has no authority to do.

Hönnold on Workmen's Compensation, Volume I, p. 685, says:

"Compensation rights can not ordinarily be assigned or subject to the payment of debts."

He also quotes from the Washington Industrial Insurance Commission, with approval, the following:

"The exemption of awards from assignment or charge is necessary in order to protect the injured employe and his dependents. If the claim were made assignable, he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation is also made exempt from his debts on the same principle that wages are now exempt. The justice and fairness of this should be conceded by all."

—Hönnold, Volume I, p. 685.

Other writers on workmen's compensation law take the same general view as does Hönnold. The compensation acts of many of the states provide that an award shall be exempt from attachment and execution and assignment.

For these reasons, it is the opinion of the Attorney-General that the commission would not be warranted in reimbursing the employer.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2113.

ROADS AND HIGHWAYS—VIADUCT TO BE CONSTRUCTED OVER
RAILROAD LINES AND CREEK—HOW COST APPORTIONED.

Where a viaduct is proposed to be built under authority of sections 8863 to 8894 G. C., and must in addition to passing over lines of railroad pass over a creek which runs parallel to said lines of railroad, the total cost of the project is the basis of division as between the public and the railroad companies (sections 8868 and 8883), and the public alone is not to bear the cost of that part of the viaduct passing over the creek.

COLUMBUS, OHIO, May 26, 1921.

HON. WATSON H. GREGG, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"The county and the Pennsylvania and Baltimore and Ohio Railroad Companies in this city are contemplating building a viaduct. Section 8868 provides the railroad companies if several railroads cross a public way at or near the same point (that is the case in this instance), shall pay not less than sixty-five per cent and the county not more than thirty-five per cent of the cost of such improvement.

Wills creek runs along parallel with the railroad tracks and the viaduct cannot be built across the tracks without crossing said Wills