Therefore, in answer to your last question, by virtue of Section 4356, supra, the village council is required to provide by ordinance the method by which the board of park trustees is appointed, and also the method by which vacancies arising during an unexpired term are filled, however, in the event that the village council fails to provide for the filling of vacancies for an unexpired term, such vacancies are filled by the mayor as provided for in Section 4252, supra.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

467.

INSURANCE—CASUALTY COMPANY—FOREIGN STATE—LICENSED TO OPERATE IN OHIO—ACCIDENTS—WHERE POLICY PROVIDES IT SHALL NOT BE IN FORCE IF ASSURED HAS THREE OR MORE WORKMEN OR OPERATIVES REGULARLY EMPLOYED, ETC.—SUCH COMPANY MAY ISSUE VALID CONTRACT OF INSURANCE—SECTIONS 1465-61, 1465-101 G. C.

SYLLABUS:

A casualty insurance company of another state licensed to do insurance business in Ohio may issue in this state a valid contract of insurance to cover claims on account of accidents occurring to employes of the assured while employed in connection with the ownership, maintenance or use of the premises described in the policy if such company is authorized by its articles of incorporation to issue such a policy and if such policy contains a provision that it shall not be in force if the assured shall have in service three or more workmen or operatives regularly employed in the same business or in or about the same establishment.

COLUMBUS, OHIO, April 25, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, State House Annex, Columbus, Ohio.*

DEAR SIR: I have your request of recent date for my opinion, which reads as follows:

> "May a casualty insurance company of another state, which is authorized to write workmen's compensation insurance under its Articles of Incorporation in its home state, and licensed to do insurance business in Ohio, issue in this state a valid contract which would cover claims on account of accidents occurring to employees of the assured while employed in connection with the

ownership, maintenance, or use of the premises described in the policy, if the policy provides that it shall not be in force if the assured shall have in service in the State of Ohio three or more workmen or operatives?

We would like to know whether G. C. 1465-101, or any other Section of the General Code of Ohio prohibits licensed insurance companies from writing the coverage described above, and whether such agreements are void under that Section."

Section 1465-101, General Code, to which you refer in your letter reads as follows:

"All contracts and agreements shall be absolutely void and of no effect which undertake to indemnify or insure an employer against loss or liability for the payment of compensation to workmen or their dependents, for death, injury or occupational disease occasioned in the course of such workmen's employment, or which provide that the insurer shall pay such compensation, or which indemnify the employer against damages when the injury, disease or death arises from the failure to comply with any lawful requirement for the protection of the lives, health and safety of employes, or when the same is occasioned by the wilful act of the employer or any of his officers or agents, or by which it is agreed that the insurer shall pay any such damages. No license or authority to enter into any such agreements or issue any such policies of insurance shall be granted or issued by any public authority in this state. Provided that any corporation organized under the laws of this state to transact liability insurance as defined in paragraph 2 of section 9607-2 or as defined in paragraph 2 of section 9510 of the General Code may by amendment of its articles of incorporation or by original articles of incorporation, provide therein for the authority and purpose to make insurance in states, territories, districts and counties, other than the state of Ohio indemnifying employers against loss or liability for payment of compensation to workmen and employes and their dependents for death, injury or occupational disease occasioned in the course of employment and to insure and indemnify employers against loss, expense and liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by workmen and employes for which the employer may be liable or has assumed liability."

This section is not regarded as declaring the public policy of this state, but is considered as being designed merely to effect a state monopoly in this class of insurance. In American Mutual Liability Insurance Com-

pany v. United States Electrical Tool Company, 55 O. App., 107, it was said by Ross, P. J.:

> "The obvious purpose of this legislation is to create in Ohio a monopoly in the state to write the insurance involved. Can it be said that the Legislature of Ohio would definitely authorize corporations created by it to do outside of the state of Ohio a thing which the state considered to be against its public policy? If so, the effect of such a position is to say to an Ohio corporation, you may do outside of Ohio what we consider reprehensible and we will incorporate you for that purpose.
>
> To us it seems such a position on the part of the state would be entirely illogical."

The provisions of Section 1465-101, supra, are definite and explicit and standing alone might very well justify the conclusion that insurance of the class mentioned in your communication is forbidden thereby. However, the meaning of the term "workman" as used in said section is limited by Section 1465-61, General Code, the pertinent parts of which I quote as follows:

> "The term 'employee,' 'workman' and 'operative' as used in this act shall be construed to mean:
> * * * * * * * * *
> 2. Every person in the service of any person, firm or private corporation, including any public service corporation, employing 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 but casual and not in the usual course of trade, business, profession or occupation of his employer.
> * * * * * * * * *"

This section is part of the Workmen's Compensation Act as is Section 1465-101, supra. The meaning of the word "workman" as used in Section 1465-101, supra, must be determined pursuant to the definition set forth in Section 1465-61, supra, and by the express provisions thereof a person is a workman within the meaning of the act only when the employer has three or more employes regularly employed in the same business or in or about the same establishment, etc.

I am not unmindful of the fact that Sections 1465-61, supra, and 1465-101, supra, in their present form differ materially from the original sections of the act bearing such numbers. However, it is well established in Ohio that the amended statutes become a part of the chapter of the

Code in which they were placed and have the same effect as if they had been originally contained therein. In 37 O. J. 767, Section 437, the rule is stated as follows:

> "An amended statute becomes part of the chapter and subdivision of the Code in which it is placed, and it is to be read and construed as if introduced into the place of the repealed section in said chapter and subdivision. Similarly, an amendmeent operates the same as if the whole statute is re-enacted with the amendment; and therefore, an act amending one or more sections of a statute should be considered in connection with, and as if embodied in, the whole statute of which it has become a part. The amended sections are presumed to have been made in contemplation of the provisions of the unamended sections of the original act."

The meaning of Section 1465-101, supra, must, therefore, be regarded as limited by Section 1465-61, supra, even though the two sections were not enacted at the same time. As so limited, Section 1465-101, supra, does not forbid employers who have less than three workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire from obtaining employers' liability insurance and does not make the issuance of such a contract of insurance illegal.

In the case of Industrial Commission vs. Gardinio, 119 O. S. 539, it was said in the opinion of the court by Mathias, J. at page 542:

> "The legislative intent is quite manifest that the provisions of the act shall apply to all those employed within the state, and also where, as incident to their employment, and in the discharge of the duties thereof, they are sent beyond the borders of the state. Undoubtedly an injury received by an employee of an Ohio employer is compensable under the workmen's compensation law, though the injury was actually received in another state, if the service rendered by him in such other state was connected with, or part of, the duties and service contemplated to be performed in Ohio."

In your request you ask whether such a policy would be valid if it contained a proviso that it shall not be in force if the assured shall have in his service in the State of Ohio three or more workmen or operatives. This language is not broad enough in its scope. The Ohio Workmen's Compensation Act may apply to employment performed outside the limits of the state under certain situations.

If the work is done partly in this state and partly in another state

or states pursuant to a contract made in Ohio, then such employment may be subject to the Ohio Workmen's Compensation Act.

It would, therefore, seem that the mere fact that an employer does not have in service in the State of Ohio three or more workmen or operatives does not necessarily exempt him from the requirements of the Workmen's Compensation Act. It might very well be the case that the employer would have two employes in service in Ohio and one employe in service in some other state at a particular moment and be subject to the Workmen's Compensation Act. Under such circumstances, it would be illegal for him to obtain an employer's liability insurance policy and such a policy if issued to him would be void. Where an employer does not have at least three employes regularly in his service in or about the same establishment or in the same business, he may properly obtain an employer's liability insurance, but if he has three or more such employes, he may not obtain such insurance even though some of such employes may be actually engaged in service in another state or states during part of the time.

The answer to your specific question is no, because the language of the proviso is not broad enough. If the words "in the State of Ohio" were omitted therefrom, there would be no legal objection to the issuance of such a policy.

You are, therefore, advised that a casualty insurance company of another state licensed to do insurance business in Ohio may issue in this state a valid contract of insurance to cover claims on account of accidents occurring to employes of the assured while employed in connection with the ownership, maintenance or use of the premises described in the policy if such company is authorized by its articles of incorporation to issue such a policy and if such policy contains a provision that it shall not be in force if the assured shall have in service three or more workmen or operatives regularly employed in the same business or in or about the same establishment.

Respectfully,
THOMAS J. HERBERT,
Attorney General.