

**OPINION NO. 82-045****Syllabus:**

A county may contract with the Industrial Commission pursuant to R.C. 4123.03 to provide workers' compensation coverage for juvenile offenders participating in a county operated rehabilitation program, provided that the board of county commissioners, or the legislative authority in a charter county, finds that these individuals are in the service of the county.

**To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio**  
**By: William J. Brown, Attorney General, July 2, 1982**

I have before me your request for an opinion regarding whether R.C. Chapter 4123, the Workers' Compensation Act, authorizes the provision of workers' compensation coverage for juvenile offenders involved in the Summit County Child Responsibility Project. In your request you describe the project as follows:

[C]hildren involved in offenses resulting in property loss, property damage, or personal injury are assigned to non-profit and governmental facilities to work off restitution owed to victims. The children are not considered employees, and receive no pay. They are credited at the existing minimum wage rate and continue until they have worked a sufficient number of hours to reimburse their victims. A maximum of \$600.00 may be worked off in the project for each offense or offenses coming to the court at one time.

It is my understanding that the project is financed in part by the state subsidy provided to the county pursuant to R.C. 5139.34.

If the juvenile offenders participating in the program were paid for their services, they would be employees of the county under R.C. 4123.01(A), and the county would be required by R.C. 4123.38 to contribute to the workers' compensation fund on their behalf. As I recently noted in 1982 Op. Att'y Gen. No. 82-007, however, where a person rendering service receives no payment there is no employer/employee relationship and R.C. 4123.38 does not apply. Thus, in the present situation the question becomes whether R.C. Chapter 4123 contains any provision for voluntary participation in the workers' compensation fund by parties who are not in an employer/employee relationship.

R.C. 4123.03 authorizes the state or any political subdivision to contract with the Industrial Commission for coverage on behalf of volunteer groups whose service has been secured by the state or any political subdivision thereof where the individual members are not employees as defined in R.C. 4123.01(A)(1). R.C. 4123.03 goes on to provide that:

if the state or any political subdivision thereof desires to secure workers' compensation in respect of any volunteer fireman, policeman, deputy sheriff, marshal or deputy marshal, constable, or other person in its service in the event of the injury, disease, or death of such person while engaged in activities called for by his position but not such as would entitle such person to compensation as an employee as so defined, subject to the limitation contained in section 4123.02 of the Revised Code, the state or such political subdivision may contract with the industrial commission for coverage of such persons under sections 4123.01 to 4123.94, of the Revised Code, while in the performance of such service. Such contract shall contain provisions for the determination of premiums, average weekly wages or their equivalent, the identity of the persons covered, and such other provisions as are necessary in each case to establish or define the risk and determine claims arising thereunder. (Emphasis added.)

Thus, R.C. 4123.03 authorizes political subdivisions to contract with the Industrial Commission to provide coverage for any person in its service who is not entitled to

compensation as an employee of the subdivision, and who, therefore, is not otherwise entitled to coverage. The sole expressed limitation is the reference to R.C. 4123.02 which excepts policemen or firemen entitled to participate in a pension fund maintained by a municipal corporation. Accordingly, R.C. 4123.03 authorizes a county to secure coverage for juvenile offenders participating in the program about which you have inquired to the extent that these persons are engaged in activities in the service of the county.

It is my understanding that the juvenile offenders participating in this program are assigned to work projects not only for the county but for other political subdivisions and nonprofit agencies as well. With respect to those juvenile offenders working directly for the county, there is no question that contractual coverage under R.C. 4123.03 is permissible. With respect to those persons working for other political subdivisions or nonprofit agencies, the county's authority to contract for coverage is less clear.

The question of whether juvenile offenders who are assigned by the county to perform services for another political subdivision or for a nonprofit agency as part of the child responsibility project are in the service of the county is not a question of law upon which I can render a conclusive opinion. It is, in my opinion, a question of fact that must be determined by the legislative authority of the county. It would appear, however, that the fact that these individuals are rendering specific services to an entity other than the county does not necessarily preclude the legislative authority from finding that a service is being rendered to the county as well. It is my understanding that the primary purposes for the establishment of this program is to rehabilitate the offenders and to compensate their victims. I certainly cannot conclude as a matter of law that it would be manifestly unreasonable for the legislative authority of the county to find that the accomplishment of these objectives constitutes a service to the county.<sup>1</sup>

In reaching this conclusion I am aware of the manner in which the "borrowed servant" rule has been applied in cases involving the Workers' Compensation Act, R.C. Chapter 4123. In particular I have noted Daniels v. MacGregor Co., 2 Ohio St. 2d 89, 206 N.E.2d 554 (1965) (syllabus) in which the court held:

[w]here an employer employs an employee with the understanding that the employee is to be paid only by the employer and at a certain hourly rate to work for a customer of the employer and where it is understood that that customer is to have the right to control the manner or means of performing the work, such employee in doing that work is an employee of the customer within the meaning of the Worker[ers'] Compensation Act. . . .

It would appear that this case is not controlling in the situation about which you inquire for two reasons. First, the situation at issue in Daniels involved mandatory coverage, and it was not possible to conclude that the employee was in the service of both employers. Your question goes to the county's authority to provide voluntary coverage pursuant to R.C. 4123.03, and the issue is whether the county is permitted to provide such coverage, not which of two parties must provide it. Second, the Daniels court considered the employer's right of control to be the determinative issue. It is my understanding that the Summit County Child Responsibility Project not only assigns individuals to various work sites but also exercises direct control and supervision over the juvenile offenders at those

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<sup>1</sup>Having adopted a charter form of government, Summit County now has a distinct legislative body. My analysis is, however, equally applicable to counties which have not adopted a charter. As I recently noted in 1982 Op. Att'y Gen. No. 82-006, although they are not legislative bodies in the traditional sense, boards of county commissioners may make "legislative" decisions with respect to matters in which they have been authorized to act.

locations. Thus, even if the reasoning in Daniels is applied, the project would appear to be the appropriate party to assume responsibility for workers' compensation coverage.

Accordingly, it is my opinion, and you are advised, that a county may contract with the Industrial Commission pursuant to R.C. 4123.03 to provide workers' compensation coverage for juvenile offenders participating in a county operated rehabilitation program, provided that the board of county commissioners, or the legislative authority in a charter county, finds that these individuals are in the service of the county.