

record as well. I am herewith returning to you said abstract of title and other files above referred to.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

55.

MEMBER OF FIRE DEPARTMENT—TWO-PLATOON SYSTEM
—SUBJECT TO CALL WHEN OFF DUTY, IN ACTUAL
SERVICE—SUBSTITUTE FIREMAN PAID ONLY FOR
TIME ON DUTY.

SYLLABUS:

1. *A duly appointed and active member of a fire department, operating under the two platoon system, who regularly works during recurring duty hours and who is subject to call while off duty during regularly recurring rest hours, is in actual service during said rest hours.*

2. *The Chief of such fire department may call a substitute fireman to duty in the place of a regular fireman and such substitute fireman should be paid for the actual time served by him. He is not entitled to pay for a corresponding rest period on the following day.*

COLUMBUS, OHIO, January 27, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I am in receipt of your letter of recent date, which reads as follows:

“We are enclosing herewith letter from E. E. Erb, City Solicitor, Marietta, Ohio, in which he asks a question for which we have no precedent.

The Fire Department of that city is operated on the two platoon system, by which a fireman is on duty 24 hours and then off duty 24 hours. A regular fireman requests leave of absence for one day and a regular substitute fireman is employed in his place.

Question. If one of the regular firemen notifies the Chief that he desires to be off duty for a period of 24 hours and consent is granted, and a regular substitute fireman is asked to and does work for a period of 24 hours for the regular fireman,

what should the payroll show as to the number of days worked by the regular fireman and by the substitute fireman in the half month payroll period in which the substitution occurred?

In other words, is the substitute fireman entitled to compensation for 24 hours' service, or is he entitled to compensation for an additional 24 hours by reason of the two platoon system of employment?

We shall appreciate an early consideration of this question."

I also acknowledge receipt of the letter attached to your letter, from Ernest E. Erb, City Solicitor of Marietta, Ohio, which reads as follows:

"The Fire Department of the City of Marietta, Ohio, is operated upon the platoon system, and the time a fireman is actually on duty is for a period of twenty-four hours and then he is relieved from active duty for a similar period, working every other day but being subject to call on his off days.

If one of the regular firemen, upon notifying the Chief of the Fire Department, desires to be off duty for a period of twenty-four hours, and consent to so being off duty is granted by the Chief, and the regular substitute fireman is asked to and does work for a period of twenty-four hours for the regular fireman, what should the payroll show as to the number of days worked by the regular and the substitute fireman?

In our particular case the Chief of the Fire Department certified the payroll, showing the regular fireman to have worked fourteen days and the substitute fireman to have worked one day. This payroll was certified by the Civil Service Commission and approved by the Director of Public Service, but upon its being taken to the office of the City Auditor, he elected to change it to show that the regular fireman had worked thirteen days and the substitute fireman two days, the theory being that the substitute fireman having done active twenty-four-hour duty was entitled to two days' pay and consequently that the regular fireman could not with the consent of the Chief remain off duty for the period of twenty-four hours, but must remain off duty for the period of forty-eight hours.

The regular fireman now insists that this change should not be made and that he is entitled to be paid for fourteen days during this period and that the substitute fireman is entitled to but one day.

I can find no law on this question and trust that you will advise me concerning any law of which you may have knowl-

edge, or of any practice which is generally followed throughout the state.”

The theory of the two platoon system for operating fire departments is that each platoon shall be on active duty for a period of 24 hours and shall then be relieved from active duty for the next 24 hour period. During the 24 hour period when a platoon is relieved from active duty, the members thereof, at the command of the proper officers, are subject to call for routine inspections and for emergencies.

I am unable to find any case directly upon the question contained in the foregoing letters. I wish to cite you, however, to the case of *Heffernan, et al vs. State of Ohio, ex rel*, 38 O. App. 552, the syllabus of which reads as follows:

“A duly appointed and active member of the police department, who regularly works during recurring duty hours, and who is subject to call while off duty during regularly recurring rest hours, is in ‘actual service’ during said rest hours within the rules providing for a pension for his children, and if said policeman, while he is off duty as aforesaid, is killed while violating the criminal laws of the state, his children are entitled to the pension provided by the regularly adopted rules and regulations of the pension board.”

I wish also to direct your attention to a query of the court in the above case, which appears on Page 554:

“ * * * * * * * * * * * * * * *
The rules of the police department require a policeman to devote all of his time to the service; of necessity he is allotted certain periods for rest and recuperation, during which time he is off duty, but he is subject to call at all times; during the time allotted for resting so as to be able to return to duty, is he not in actual service, within the meaning of said rule 19?
* * * * * * * * * * * * * * *

In the present instance there seems to be no question but that the regular fireman was available for any call to duty on the day his platoon was relieved from active duty.

It is, therefore, my opinion that the semi-monthly pay roll should show the substitute fireman entitled to one day’s pay, and the regular

fireman entitled to pay for the remainder of the period covered by the pay roll.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

56.

COUNTY ENGINEER — DEPUTY — ANNUALLY EMPLOYED,
SERVICES ON COUNTY DITCH IMPROVEMENT—NOT
ENTITLED TO A PER DEIM FEE TO BE INCLUDED IN
COST OF IMPROVEMENT—SPECIALLY EMPLOYED DEP-
UTY ENGINEER ENTITLED TO PER DIEM FEE.

SYLLABUS:

1. *Where a County Engineer and an annually employed Deputy Engineer perform services on a county ditch improvement project, no per deim fees for these services can be included in the costs to be assessed for said ditch improvement.*

2. *A per diem fee representing the actual cost of a Deputy Engineer specially employed for county ditch improvement by the County Engineer, may properly be made a part of the costs to be assessed.*

COLUMBUS, OHIO, January 27, 1937.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of January 11th, which reads as follows:

“The County Engineer has requested an opinion from you regarding the assessment of costs on county ditches. He would specifically like to know whether he may assess as part of the costs of the ditch (a) a per diem fee for the County Engineer himself under section 2822 of the General Code; (b) a per diem fee for the annually employed Deputy County Engineer; and (c) a per diem fee for a Deputy County Engineer specially employed for the project.

“The Code sections involved are 6454 and 2822 of the General Code.

“Will you kindly give us your opinion on this?”