

the enactment of the statute containing the limitation as it does.

I am of the opinion, in specific answer to your question, that a county superintendent of schools may be appointed for a term of three years or less, regardless of whether or not the terms of a majority of the appointing board will have expired before the end of the term for which the county superintendent is appointed.

Respectfully,

JOHN W. BRICKER,

Attorney General.

85.

WORKMEN'S COMPENSATION — BY-STANDER CALLED TO ASSIST
SHERIFF IN MAKING ARREST—NOT ENTITLED TO WORKMEN'S
COMPENSATION.

SYLLABUS:

When a person is called upon by the sheriff of a county to aid him in the execution of the criminal laws of the state, such a person, not being an appointee for hire, is not an employe of the county and therefore is not entitled to the benefits of the Workmen's Compensation Law.

COLUMBUS, OHIO, January 30, 1933.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I beg to acknowledge your inquiry which reads as follows:

"It is the desire of the Commission that they have the benefit of your opinion in the following matter:

The sheriff of Defiance County deputized a by-stander to aid him in an emergency, namely an insane person had murdered his wife and had injured the Chief of Police. This by-stander was deputized by the sheriff to aid in apprehending this man and in attempting to apprehend him the party so deputized was injured and died as a result of these injuries.

We would be pleased to have you advise us as to whether or not the person deputized under such circumstances is an employe within the meaning of the Workmen's Compensation Act."

The discussion must necessarily begin with the provisions of the law defining employer and employe under the Workmen's Compensation Act. Section 1465-60 provides that the following shall constitute employers subject to the provisions of this act: "the state and each county, city, township, incorporated village and school district therein". The term "employe", "workman", or "operative", as used in the Workmen's Compensation Act, is defined in section 1465-61, which reads in part as follows:

"Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and

villages, *under any appointment or contract of hire*, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein.”

Considering the above definitions, it must now be determined whether the by-stander referred to in your statement of facts was an employe of the county within the meaning of the Workmen's Compensation Act. I assume that the sheriff in deputizing the by-stander acted under the provisions of section 12857, which reads as follows:

“Whoever, when called upon by a sheriff, coroner, constable, or other ministerial officer to assist in apprehending a person charged with, or convicted of, a criminal offense, or in securing such person when so apprehended, or in conveying him to prison, neglects or refuses so to do, shall be fined not more than fifty dollars.”

It seems clear from the circumstances outlined in your letter and from the provisions of section 12857, *supra*, that the decedent acquired the status of a special deputy sheriff of the county and was engaged in aiding in the execution of the criminal law at the time of the fatal injury. Undoubtedly the duties and powers imposed upon him were under authority of the sheriff by virtue of section 12857 and constituted an appointment of the decedent to perform police service for the county. It is equally clear that the decedent was not an officer within the meaning of the exception of section 1465-61. Neither can it be said that the decedent was engaged by the sheriff under a contract of hire.

The Supreme Court in an interesting case which called for a determination of the relationship of a juror to the county, held in *Indus. Comm. vs. Rogers*, 122 O. S. 134, that:

“A juror is not an ‘officer’ within the purview of section 1465-61. A juror, while in service as such, is in the service of the county under an appointment of hire.”

The Supreme Court in this case affirmed the Court of Appeals and the Common Pleas Court of Hamilton County. The Court of Common Pleas in the Rogers case was compelled to determine what constitutes an appointment under the Workmen's Compensation Act, and in the course of its opinion said:

“It is not easy to state the difference in meaning between the terms ‘under appointment’ and ‘under contract of hire’ but generally speaking in service ‘under appointment’, the duties, terms, and conditions of such service are fixed by statutes, laws, and rules, while in service ‘under contract of hire’, the duties, terms, and conditions of such service are fixed by contract.”

It is to be noted that the Common Pleas Court in the language just quoted did not regard the phrase “of hire” as modifying the word “appointment”. On this point, however, the Supreme Court, on page 138, specifically states:

“For we agree with the commission that the words ‘of hire’ in section 1465-61 qualify the word ‘appointment’ as well as the word ‘contract’.”

This latter language of the Supreme Court would seem to be dispositive of the present question. As before stated, it is my opinion that, when the sheriff or other officer authorized so to do calls a citizen to his assistance in an emergency, such act on the officer's part constitutes an "appointment". If an appointment were all that were necessary, this would make the citizen an employe within the meaning of the Workmen's Compensation Act, but the Supreme Court has categorically said that there must be not only an appointment but also an appointment *of hire*. This apparently was the basis of the court's conclusion that a juror is entitled to the benefits of the act and the lack of compensation constitutes the stumbling-block that prevents a conclusion that the person killed under the circumstances outlined in your inquiry can be classified as an employe.

In so concluding, I assume that no compensation or reward of any kind was paid or agreed to be paid to the deceased for the service performed, since your inquiry is silent on this point. If, in fact, compensation was in contemplation of the parties, then the opposite conclusion would be indicated.

In reaching the foregoing conclusion, I am not unmindful of the fact that the case is a close one and that there is no decision directly in point in this state. Precisely the opposite conclusion was reached in Wisconsin in the case of *Village of West Salem vs. Indus. Comm. of Wisc.*, 162 Wisc. 57; 155 N. W. 929. That case would be very persuasive here, were it not for the language of our Supreme Court in *Indus. Comm. vs. Rogers, supra*.

Specifically answering your question, I am of the opinion that when a person is called upon by the sheriff of a county to aid him in the execution of the criminal laws of the state, such a person, not being an appointee for hire, is not an employe of the county and therefore is not entitled to the benefits of the Workmen's Compensation Law.

Respectfully,

JOHN W. BRICKER,
Attorney General.

86.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS ASSISTANT SUPERINTENDENT OF THE OHIO STATE BLIND SCHOOL—W. G. SCARBERRY.

COLUMBUS, OHIO, January 30, 1933.

HON. B. O. SKINNER, *Director of Education. Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond to guarantee the faithful performance of the duties of W. G. Scarberry, as Assistant Superintendent of the Ohio State Blind School. The bond, given by the Sun Indemnity Company of New York, is in the penal sum of \$10,000.00.

After an examination of said bond, I find the same to be in proper legal form. I am therefore endorsing my approval on said bond and returning it to you herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.