

persons who receive or apply for relief, gains a residence in said county in this state, it being the intention of the legislature that a person able to maintain or support himself or herself, by whatever means, without the aid and assistance of charitable organizations would gain a residence in the county.

Specifically answering your question, I am of the opinion that the appropriate subdivision of Carroll County, Ohio, is responsible for the care and keep of Mrs. G.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

487.

BUS DRIVER—WHETHER INDEPENDENT CONTRACTOR OR EMPLOYE DETERMINED BY TERMS OF SPECIFIC CONTRACT WITH BOARD OF EDUCATION—RELATIONSHIP DISTINGUISHED—WORKMEN'S COMPENSATION LAW APPLICABLE WHEN.

SYLLABUS:

1. *The relation existing between the board of education and the bus driver under contract for the transportation of pupils must be determined by the terms of the specific contract, whether employe or independent contractor. Where the relationship of independent contractor exists between the board of education and the person contracting for the transportation of the pupils, the amount paid the independent contractor should not be included in the amount expended for services of employes, as required in the report in section 1465-65, General Code.*

2. *Where from the terms of the specific contract the person contracting for the transportation of the school pupils with the board of education is required to drive his own truck, such a contract is a contract of hire within the meaning of the Workmen's Compensation Act. That amount of the contract price which fairly represents the amount paid the driver for his personal services should be included in the amount expended for services of employes in the report required under section 1465-65, General Code, and not the full contract price.*

COLUMBUS, OHIO, April 6, 1933.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“A question has been presented to this office by the County Superintendent of Schools on which we would like to have the opinion of your office.

Under Section 1465-65 of the General Code the Clerk of the Board of Education of each School District is required to furnish to the County Auditor a report showing the amount of money expended by the District during the preceding calendar year for services of employees under the Workmen's Compensation Law.

In Butler County the School Districts have worked out an arrangement with bus drivers whereby the bus driver purchases and owns a bus and he is then hired by the School District. He receives approximately

\$90.00 per month, which sum includes his own personal services and also the use of the bus.

Some time ago the School Board had a meeting and decided that a reasonable division of this amount would be \$60.00 per month for the bus and \$30.00 per month for the personal services of the driver. However, this is an arbitrary division and is without any authority.

We would like to have your opinion as to what amount shall be reported by the Clerk of the School District—whether it shall be the total amount paid to each driver or whether it shall be only the amount paid to him for personal services. We neglected to mention that in the contract of hire nothing is said about the division of the money.”

I am also in receipt of a copy of the form of contract used by the board of education in contracting with persons for the transportation of the pupils.

Section 1465-61 defines an employee as applicable to persons within the public employ, as follows:

“The term ‘employee,’ ‘workman’ and ‘operative,’ as used in this act shall be construed to mean:

1. 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. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen’s or firemen’s pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen’s or firemen’s pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds.

* * * * *

Section 1465-65 provides:

“Before the 15th day of January, each year, the chief fiscal officer of each taxing district in a county shall furnish to the county auditor a report showing the amount of money expended by the district during the preceding calendar year for the services of employes under the workmen’s compensation law, and the county auditor of each county shall prepare on forms, furnished by the industrial commission, and file, in the month of January of each year, with the industrial commission, a list in triplicate

showing the amount of money expended during the preceding calendar year by the county and the several taxing districts therein for the services of all employes under the workmen's compensation law; said officer and auditor shall furnish at any time such other information in respect to matters affecting contributions as the commission may require.

The industrial commission shall on receipt of such lists certify to each county auditor and the treasurer of state the amount of money due from the county, for such county and for the several taxing districts therein, as the proper contribution to the public insurance fund.

If any fiscal officer or county auditor shall fail to furnish such information within the time specified, the industrial commission may compel the officer or auditor to furnish the same by a proceeding in mandamus or by an information of contempt as provided in section 1465-48.

The industrial commission may investigate the correctness of such information, and if it be found at any time that the county or any taxing district has not reported the correct information, the commission may make such deductions or additions as the facts warrant and take the same into consideration in determining the current or future contributions to be made by the county for such county and any taxing district therein.

In the event the information is not furnished in the time specified, the commission may fix the amount of contribution to be made by the county or district in question and certify the same for payment."

There must first be determined the relationship existing between the drivers of the busses and the board of education, whether employes or independent contractors, in view of the particular terms of the contract and in the light of court decisions defining such a relationship. In a note appearing in 19 A. L. R., 226, it is said at page 256:

"The theory reflected in the language used in many of the American cases in which those categories have been explicitly differentiated seems to be that the person employed is to be regarded as an agent, or an independent contractor according as he is subject to, or free from, the control of the employer with the respect to the details of his work."

In determining the relationship the Ohio courts have applied the test of the extent of the control. It is said in 21 O. Jur. at page 624 that:

"The control over the work performed is a vital test in determining whether one is an independent contractor or a mere servant. Generally if the contractor is under the control of the employer, he is a servant; if not under such control, he is an independent contractor."

An independent contractor has been defined in the case of the *Post Pub. Co. vs. Schickling*, 22 O. App. 318, affirmed by the Supreme Court of Ohio in 115 O. S. 589. The second branch of the syllabus reads as follows:

"'Independent contractor' is one employed to accomplish some result or do some piece of work, but who is at liberty in general to choose his own means and methods, being responsible only for results."

In the case of *Snodgrass, Admx. vs. The Cleveland Co-Op. Coal Co.*, 31 O. App. 470, the court in defining the relationship of an independent contractor, at page 477, said :

"It is well settled that one who renders service in the course of an independent occupation in representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished, is regarded as an independent contractor. If one submits himself to the direction of his employer as to the details of the work, fulfilling his wishes, not merely as to the result, but also as to the means by which that result is to be obtained, he is regarded as a servant, and not as an independent contractor. It may be stated in another way, namely, that one who contracts to do a specific piece of work, executing the work either entirely according to his own ideas, or in accordance with the plan previously given to him by the person for whom the work is done, without being subject to the orders of the latter with respect to the details of the work, is regarded as a contractor and not as a servant. On the other hand, one who is subject to the will of his employer, and who cannot properly refuse to obey his directions as to the mode in which the work is to be done, is not a contractor, but a servant. The fact that a person was engaged to do piecework, and furnished his own tools in the doing of the work, does not alter the character of the employment from that of servant to that of independent contractor."

In the very recent case of *Industrial Commission vs. McAdow*, 126 O. S. 198, the court held that where a board of county commissioners employed a person to decorate a witness room in a court house, such person under the contract to furnish the labor and materials within a maximum price, the board reserving no right of control over the mode and manner of executing the job, such person is an independent contractor and not an employe within the meaning of section 1465-61, General Code. Jones J. in the opinion cited Honnold on Workmen's Compensation, Vol. 1, pp. 208, 211:

"The compensation law does not apply where the injured person is an independent contractor, and the relation of employer and employe does not exist. * * * Generally speaking an 'independent contractor' is one who exercises an independent employment and contracts to do a piece of work according to his own method, without being subject to the control of the employer, save as to the result of his work. * * * When the doing of specific work is intrusted to one who exercises an independent employment, and selects his own help, and has the immediate control of them, and the right to control the method of conducting the work, the contractor is an independent contractor."

In determining the relationship between the board of education and the persons contracting for the transportation of the pupils, reference must be made to the particular terms of the contract in question. According to the terms of the contract

"The board of education agrees to bind itself to employ said party * * * to transport all pupils to and from school building on route No,

which starts at * * * for a period of twenty days to the month, at \$..... per day of services actually rendered, payable monthly. * * *

* * * party of the second part (the driver) is to furnish the motor bus which in this case shall be a chassis, and a body with inside dimensions of by feet."

Section 4 of said contract reads as follows:

"Said party of the second part, hereby agrees to allow no person to drive his-her bus while conveying school children except, the regular driver, or hereinafter known as his-her substitute driver."

Clearly, from the above section of said contract the person contracting for the transportation of the pupils need not drive his own truck. He could contract to furnish any number of trucks for the different routes as long as suitable drivers were furnished.

The board of education has in its specifications to the contract, such specifications being incorporated and made a part of the contract by section 3 of the main contract, reserved the right of certain control and supervision over the drivers and persons contracting for the transportation of the pupils. Such reservation as disclosed by the specific provisions in the specifications is not such a reservation of control over the manner and mode of doing the particular work as would alter the relationship existing between the board of education and the person contracting for the transportation of the pupils.

"The retention of the right to supervise as to the results, as distinguished from the right to supervise as to the means by which the intermediate results should be obtained, does not affect the relationship."
3 Corpus Juris, 1320.

Of course a distinction must be made between mere supervisory control and actual control and no hard and fast rule can be set which can be applied in all cases. The relationship, whether contractor or employe, depends upon the specific terms of the contract.

It is possible under the terms of the blank form of the contract submitted for the person contracting for the transportation of school pupils to be either an independent contractor or employe. The relationship existing between the board of education and the person contracting with the board for the transportation of the school children must be determined in each case by the specific terms of the contract. If the owner of the bus is required by the terms of the contract to drive his own bus, it is a contract for the personal services of the driver and therefore a contract of hire within the Workmen's Compensation Act. If by the terms of the specific contract the person contracting with the board is not required to personally drive the truck, he is not an employe within the Workmen's Compensation Act.

It is possible under the terms of the form of contract submitted for one individual to contract for the transportation of pupils over several routes and the contractor is required to furnish the busses and suitable drivers. The drivers under such contract are the employes of the contractor and not of the board of education.

Under contracts requiring the personal services of the owner of the bus, that amount of the contract price which fairly and reasonably represents the amount of the contract price paid to the driver for his personal services should be included in the amount expended for services of employes under the Workmen's Compensation Law, as required in the report under section 1465-65, General Code. It should be that amount of the contract price which the board of education deems a reasonable compensation for driving the bus or is that amount which the board would have to pay for drivers if the board of education owned the bus. The full amount of the contract price which includes compensation for use of the bus should not be included in the amount spent for personal services.

In specific answer to your inquiry, it is my opinion that:

1. The relation existing between the board of education and the bus driver under contract for the transportation of pupils must be determined by the terms of the specific contract, whether employe or independent contractor. Where the relationship of independent contractor exists between the board of education and the person contracting for the transportation of the pupils, the amount paid the independent contractor should not be included in the amount expended for services of employes, as required in the report in section 1465-65, General Code.

2. Where from the terms of the specific contract the person contracting for the transportation of the school pupils with the board of education is required to drive his own truck, such a contract is a contract of hire within the meaning of the Workmen's Compensation Act. That amount of the contract price which fairly represents the amount paid the driver for his personal services should be included in the amount expended for services of employes in the report required under section 1465-65, General Code, and not the full contract price.

Respectfully,

JOHN W. BRICKER,

Attorney General.

488.

APPROVAL, NOTES OF ORANGE VILLAGE SCHOOL DISTRICT, CUYA-
HOGA COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, April 6, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

489.

APPROVAL, BONDS OF STRUTHERS CITY SCHOOL DISTRICT, MA-
HONING COUNTY, OHIO, \$43,000.00.

COLUMBUS, OHIO, April 6, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.