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A FEDERAL CREDIT UNION IS A PRIVATE CORPORATION AND SUBJECT TO THE WORKMEN'S COMPENSATION ACT— §§4123.01, 1751.1752, R.C., 12 USC 1962.

SYLLABUS:

A federal credit union organized and operating under the authority of the Federal Credit Union Act, is a private corporation as such term is used in Chapter 4123., Revised Code, and is subject to the provisions of said chapter, commonly known as the Workmen's Compensation Act.

Columbus, Ohio, November 14, 1962

Hon. J. Maynard Dickerson, Chairman  
The Industrial Commission of Ohio, Columbus 15, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"It is respectfully requested that your office render an opinion regarding the following questions:

"1. Were federal credit unions subject to the provisions of the Workmen's Compensation Act of Ohio prior to January 1, 1962?

"2. If your answer to the above question is 'No', were the federal credit unions subject to the provisions of Workmen's Compensation Act of Ohio since January 1, 1962?"

Chapter 4123., Revised Code, contains the workmen's compensation law of Ohio. In general, it provides a system of compensation for physical injury suffered by persons covered by the law in the course of and arising out of their employment. Such compensation is paid from the fund created from compulsory contributions made by employers. As to what employees are covered by the law, division (B) of Section 4123.01, Revised Code, reads, in part, as follows:

" 'Employer' means:

\* \* \* \* \*

"(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service 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, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance funds the premiums provided by sections 4123.01 to 4123.94, inclusive, of the Revised Code.

"All such employers are subject to sections 4123.01 to 4123.94, inclusive, of the Revised Code. \* \* \*"

A federal credit union may be organized in accordance with the provisions of Title 12, U.S.C. 1952 ed., Sections 1751 through 1772, inclusive, which statutes are collectively cited as the "Federal Credit Union Act." (See 12 U.S.C. 1751) 12 U.S.C. 1952 ed., 1752, provides in part:

“As used in this chapter—

“(1) the term ‘Federal credit union’ means a cooperative association organized in accordance with the provision of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

“\* \* \* \* \* \* \* \* \*”

The foregoing definition indicates that a federal credit union is simply an association of persons for a common purpose similar to those associations named in Chapter 1745., Revised Code, rather than a corporation; however, an examination of the Federal Credit Union Act shows the contrary to be true. In 12, U.S.C. 1952 ed., 1753 provision is made for the filing of an organization certificate with the proper federal officer, which certificate contains, among other information, the name of the “association” and the term of existence of the “corporation.” In 12 U.S.C. 1952 ed., 1754, it is stated:

“\* \* \* Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.”

Further, 12 U.S.C. 1952 ed., 1757 provides in part:

“A Federal credit union shall have succession in its corporate name during its existence and shall have power—

- (1) to make contracts;
- (2) to sue and be sued;
- (3) to adopt and use a common seal and alter the same at pleasure;

“\* \* \* \* \* \* \* \* \*”

From the foregoing, it is my opinion that a federal credit union organized under the Federal Credit Union Act is a “corporation” as said term is used in Section 4123.01, *supra*.

Coming now to a consideration of the public or private nature of such credit unions, attention is called to 12 U.S.C. 1952 ed., 1762, which provides in part:

“Annually or semiannually, as the bylaws may provide, and after provision for the required reserves, the board of directors

may declare a dividend to be paid from the remaining net earnings. Such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared.  
\* \* \*

The provision quoted above for the payment of dividends to shareholders represents what must be a primary purpose of the corporation, the appreciation of the shares and thus the enlargement of the estate of the shareholder. Such purpose, as well as its corollary, the loaning of the dollars of the corporation, are no different, other than in methods of operation, from the activities of a commercial loan company, a bank, or a building and loan association. Accordingly, I conclude that a federal credit union is a "private corporation" as that term is used in Section 4123.01, Revised Code.

As to the amenability of such a private corporation to the Ohio Workmen's Compensation Act, it is stated in 58 American Jurisprudence, 628, Workmen's Compensation, Section 74, as follows:

"It has been stated as a general principle that a state workmen's compensation act is applicable only to those relations of employer and employee which are in the legislative control of the state, untrammelled by the laws of the United States. Inasmuch, however, as the states are not inhibited from regulating the relations of employer and employee, insofar as the Federal government may not already have occupied the same field of legislation, it follows that a state compensation act may be considered effective and operative as to all such cases as do not come within the purview or operation of any Federal enactment. The fact that the work in connection with which an injury is sustained is being done by or for the Federal Government does not necessarily render a state compensation act inapplicable thereto. National banks have been held to be subject to state compensation acts."

It should be noted that the case cited for the proposition found in the first sentence of the above quotation, *Shaughnessy v. Northland S.S. Co.*, (Wash. 1917) 162 Pac. 546, dealt with a claimed injury which occurred to a workman while upon a vessel on navigable waters. The court therein held that a claim for such injury was subject to controversy in admiralty in the federal courts regardless of the fact that a state workmen's compensation law would preclude such suit. The court, therefore, concluded that the workmen's compensation law involved did not apply.

The interest of the federal government in federal credit unions is regulatory, *Social Security Administration Baltimore Federal Credit*

*Union, a corporation duly incorporated etc., et al. v. United States of America*, 138 F. Supp. 639. An examination of the Federal Credit Union Act shows no other interest. Said act is designed for the protection of the borrowers and shareholders of such credit unions in the same fashion as the laws relating to "National Banks, member banks of the Federal Reserve System, Federal Land Banks," and so forth. *Social Security, etc., et al. v. United States of America, supra*, at page 645.

Federal regulation of such credit unions has not taken control of them as employers under the Workmen's Compensation Act away from the states, for such federal regulation in no way deals with the rights covered by the workmen's compensation laws. Nor can it be said that the state workmen's compensation laws would interfere with federal regulation of credit unions since such regulation is directed primarily to the financial responsibility of such corporations, while the workmen's compensation laws are concerned with the creation of an insurance fund for the benefit of employees. *State ex rel. Powhatan Mining Co., v. Industrial Comm.*, 125 Ohio St. 272.

It should be noted that Congress has established a workmen's compensation act for the civil employees of the federal government, 5 U.S.C., 751 *et seq.*; however, it would not appear that the employees of a federal credit union would be "employees" as defined by 5 U.S.C. 790. Accordingly such employees would not be entitled to benefits under said act. I am able to find no federal legislation which would directly or indirectly exclude federal credit unions from state workmen's compensation laws. Further, federal credit unions are exempt from certain state taxes by 21 U.S.C. 1768, but the payments to the workmen's compensation fund are contributions and have never been considered taxes. Article II, Section 35, Ohio Constitution; *State ex rel. Powhatan Mining Co. v. Industrial Commission*, 125 Ohio St. 272.

Considering the general propositions of law found at 58 American Jurisprudence etc., *supra*, in light of the foregoing, I am of the opinion that the application of the provisions of the Ohio Workmen's Compensation Act to federal credit unions would in no way impair federal regulation of the same, nor would such application conflict with a field of legislation already occupied by the federal government, I know of no reason why such conclusion should not have applied prior to January 1, 1962. (It may be noted that recent federal legislation, 26 U.S.C. 3308, affected the obligation of federal credit unions in connection with certain unemploy-

ment compensation taxes; however, such legislation can have no effect upon this opinion.)

In accordance with the above, I am of the opinion and you are advised that a federal credit union organized and operating under the authority of the Federal Credit Union Act, is a private corporation as such term is used in Chapter 4123., Revised Code, and is subject to the provisions of said chapter, commonly known as the Workmen's Compensation Act.

Respectfully,

MARK McELROY  
Attorney General