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WORKMEN'S COMPENSATION ACT COVERAGE OF MEMBER, OHIO WILDLIFE COUNCIL—"APPOINTED OFFICIAL"; §4123.01 R.C.—NO LIABILITY UPON STATE FOR DEATH OR INJURY RESULTING FROM ACT OF STATE PILOT FLYING STATE AIRCRAFT.

SYLLABUS:

1. A member of the Ohio Wildlife Council, who is a passenger in a state-owned aircraft, in the course of discharging his official duties, is an "appointed official" of the state within the meaning of Section 4123.01, Revised Code, and is within the coverage and "protection" of the Workmen's Compensation Act.

2. There is no responsibility on the part of the State of Ohio or of the Division of Wildlife to a member of the Wildlife Council, or to his family, in the event of injury or death of such member.

The compensation of county court judges under the formula found in Section 1907.081, Revised Code, should be based as to one factor on the population of the county court district and not on that of the area of separate jurisdiction of individual judges in counties having more than one such judge.

Columbus, Ohio, April 3, 1959

Hon. Herbert B. Eagon, Director
Department of Natural Resources, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Approximately one year ago the Ohio Wildlife Council approved the acquisition of a light plane for use in better accomplishing the objectives of our staff. It has developed that occasionally a member of the Wildlife Council is carried as a passenger in this plane. A member of the Wildlife Council is not a salaried employee of the State of Ohio; however, a Council member is recognized as an integral part of state government at numerous places in Chapter 1533 of the Revised Code.

"The Council in regular session has requested that I obtain from the State's Attorney General an official opinion on the following:

"1. While engaged in flying and in event of a crash or other accident associated with the flight, what protection, if any, is provided to said Council member or his family in case of injury or death?

“2. What would be the responsibility of the State of Ohio or any of its departments or divisions in case of such accident or death with particular reference to the Division of Wildlife and the Industrial Commission?”

The first question presented by you raises the question of whether a member of the Wildlife Council, who is a passenger in a state-owned aircraft, while on official business, is within the coverage of the Workmen’s Compensation Act and entitled to benefits in the event of accidental injury or death. I know of no other “protection” that can be afforded such member.

Section 4123.01, Revised Code, which defines persons covered by the Workmen’s Compensation Act, provides in pertinent part as follows:

“As used in section 4123.01 to 4123.94, inclusive, of the Revised Code:

“(A) ‘employee,’ ‘workmen,’ or ‘operative’ means:

“(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations, and executive officials of boards of education, *under any appointment* or contract of hire, express or implied, oral or written, *except any elected official of the state*, or of any county, municipal corporation, or township, or members of boards of education; ***” (Emphasis added.)

Section 1531.03, Revised Code, provides that the Wildlife Council shall have nine members, including the director of natural resources. The remaining eight members of the Council are *appointed* by the governor with the advice and consent of the senate. This section further provides that the governor may at any time remove any member of the Council for misfeasance, nonfeasance or malfeasance in office.

It is clear that the members of the Wildlife Council serve under an “appointment”, thereby satisfying the requirement of Section 4123.01, Revised Code, that individuals covered by the statute must be “*in the service of the state . . . under any appointment.*”

Powers of the Wildlife Council are set forth in Section 1531.06, Revised Code. The Wildlife Council has the power to acquire land and to transfer land. The express power to make and issue orders benefiting wild animals, fish or game management, preservation, propagation, and

protection lies with the Council. See also Section 1531.08, Revised Code, concerning the powers of the Wildlife Council.

Appreciation of the nature of powers of the members of the Wildlife Council brings me to the conclusion that these persons, collectively, are authorized to exercise rather extensive sovereign powers. This being so, it logically follows that the members of the Wildlife Council are "officials or officers" of the state. In the case of *Industrial Commission of Ohio v. Rogers*, 122 Ohio St., 134, the Court indicates characteristics of an officer; the Court said as follows at page 136:

"There are many definitions of an 'officer,' none of which is sufficient to determine the status of every agency through which the state acts; but the outstanding characteristic common to all definitions of an officer is the possession by him of some sovereign power."

From the foregoing, therefore, it appears clear that the members of the Wildlife Council are "appointed state officials" within the coverage of the Workmen's Compensation Act entitled to participate in the Workmen's Compensation fund for disability or death as a direct or proximate result of accidental injury received in the course of and arising out of their service as members of the Wildlife Council.

I am not unmindful of the fact that one of my predecessors in office arrived at a different conclusion in the consideration of a somewhat analogous question in Opinion No. 3217, Opinions of the Attorney General for 1940, p. 1190, the syllabus in which reads as follows:

"The members of the four Boards of Claims created under Section 1465-44a of the General Code, are 'officials' within the meaning of paragraph 1 of Section 1465-61, General Code and are therefore excluded from participation in the State Insurance Fund as employees of the State, under the provisions of the Workmen's Compensation Act."

Prior to June 15, 1943, Section 1465-61, General Code, which defined the terms "employee," "workman" and "operative" as used in the Workmen's Compensation Act, in pertinent part, read as follows:

"1. Every person in the service of the state * * * under any appointment * * * except *any official* of the state * * *" (Emphasis added.)

The 95th General Assembly amended Section 1465-61, General Code (120 Ohio Laws, 450, Effective June 15, 1943). After this amendment, Section 1465-61, General Code, in part read as follows:

"1. Every person in the service of the state * * * under any appointment * * * *except any elected officials of the state * * **"
(Emphasis added)

This legislative amendment evidences definite intent to enlarge Workmen's Compensation coverage to embrace state officials excluding only elected officials. Present Section 412.01, *supra*, as pertinent to your inquiry, does not differ from Section 1465-61, General Code, as amended effective June 15, 1943. It is thus evident that Opinion No. 3217, *supra*, is readily distinguishable from the question presented and situation here involved.

In regard to the second question posed by you, I find no responsibility on the part of the State of Ohio or of the Division of Wildlife to a member of the Wildlife Council, or to his family, in the event of injury or death of such members. The responsibility of the Industrial Commission in such event would be as previously set forth.

Accordingly, in specific answer to your inquiry, it is my opinion and you are advised that:

1. A member of the Ohio Wildlife Council, who is a passenger in a state-owned aircraft, in the course of discharging his official duties, is an "appointed official" of the state within the meaning of Section 4123.01, Revised Code, and is within the coverage and "protection" of the Workmen's Compensation Act.

2. There is no responsibility on the part of the State of Ohio or of the Division of Wildlife to a member of the Wildlife Council, or to his family, in the event of injury or death of such member.

Respectfully,

MARK MCELROY
Attorney General