

936.

WORKMEN'S COMPENSATION ACT—SECTION 1465-61 G. C. CONSTRUED—PERSONS IN SERVICE OF COUNTY OR TOWNSHIP WHO ARE REQUIRED TO BE ELECTED ARE "OFFICIALS"—EVERY OTHER PERSON "EMPLOYEE".

Every person in the service of the county or township who is required to be elected, as provided by law, is an "official" within the meaning of section 1465-61, 108 O. L., 316, and every other person distinctly within the service of the county or township is an "employee" within the meaning of said section.

COLUMBUS, OHIO, January 15, 1920.

HON. LOUIS H. CAPELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The question has arisen in this county as to who comes within the meaning of the terms 'persons in the service of the state, county, city, township, incorporated village or school district' and 'officer of the state, county, city, township, incorporated village or school district' as used in section 1465-61 of the General Code of Ohio, under the industrial commission.

The auditor of the state has requested our county auditor to furnish him with the salaries and wages expended in this county during the last fiscal year. Inasmuch as the statute exempts officials, many of the heads of departments in this county are at a loss to know whether or not deputies and other subordinates can properly be brought under the heading of officials.

We, therefore, respectfully request an opinion as to the class in which the below mentioned fall.

Assistant prosecuting attorneys.

Deputy county auditors.

Deputy county sheriffs.

Deputy county surveyors.

Court bailiffs.

Court stenographers.

We will appreciate it very much if some interpretation could be placed upon the statute that would lay down a working rule whereby the status of any subordinate could be ascertained for the purpose of workmen's compensation.

The county auditor will not compile the information requested by the auditor of the state until he has a ruling on the question and we therefore respectfully request your usual prompt action."

Section 1465-61 G. C. (108 O. L. 316), upon which you desire an interpretation, is in part as follows:

"The terms '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."

Inasmuch as your inquiry relates to the status of certain positions of the county, in view of the statute above quoted, this opinion will treat solely with the application of said statute with reference to those in the service of the county and township.

Under the provisions of said statute every person in the service of the county and township shall be regarded as an employe except county and township "officials." The word "official" as used in this statute is synonymous with the word "officer." It therefore follows that every person in the service of the county or township is an employe, as contemplated by the statute, except "county or township officers."

Section 1 of Article X of the constitution of Ohio provides:

"The general assembly shall provide, by law, for the election of such county and township officers as may be necessary."

In view of this constitutional provision every county and township officer must be elected. While there are numerous decisions of the courts indicating what positions are "offices" requiring the incumbents to be elected in accordance with said constitutional provision, it is not regarded as essential to make further reference to said decisions herein. However, it may be said that the statutes now designating the elective offices of the counties and townships of the state are, generally speaking, in accord with the decisions of the courts relative to the operation of section 1, Article X.

It is the opinion of this department that every person in the service of the county or township, who is required to be elected as provided by law, is a county or township official under the provisions of section 1465-61, and that every other person distinctly in the service of the county or township is an "employe" within the meaning of said section.

In specific answer to your inquiry, it is believed that assistant prosecuting attorneys, deputy county auditors, deputy county sheriffs, deputy county surveyors, court bailiffs and court stenographers are employes within the meaning of section 1465-61 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.