

**OPINION NO. 82-041****Syllabus:**

Political subdivisions and agencies which accept the services of persons on probation to perform community services pursuant to R.C. 2951.02(G), and which do not provide any compensation or remuneration to such individuals, are not required to make contributions to either the workers' compensation fund or the unemployment compensation fund on behalf of those individuals.

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**To: James S. Rapp, Hardin County Prosecuting Attorney, Kenton, Ohio**  
**By: William J. Brown, Attorney General, June 17, 1982**

I have before me your request for my opinion regarding several questions relating to R.C. 2951.02(G) which provides for the imposition of community service work as part of the terms of probation for a person convicted of a misdemeanor. In particular you ask:

1. Would a political subdivision, agency, or charitable organization which accepts the service of persons on probation be required to make contributions to either the workers' compensation fund, the unemployment compensation fund, or both?
2. What additional liability insurance coverage should a political subdivision, agency, or charitable organization which accepts the service of persons on probation obtain to protect itself?

At the outset, I ask you to note that I will address your questions only as they concern political subdivisions and agencies. I am empowered by R.C. 109.14 to advise prosecuting attorneys only with respect to their duties, and as a prosecuting

attorney has the duty to advise various political subdivisions but not charitable organizations, I will so limit my consideration of your questions.

In addressing your first question I start by noting R.C. 2951.02(G) which states in pertinent part:

When an offender is convicted of a misdemeanor the court may offer to the offender, as a condition of probation that would be in addition to the required conditions of probation and the discretionary conditions of probation that may be imposed pursuant to division (C) of this section, that the offender be required to perform supervised community service work under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions of the state, or agencies of the state or any of its political subdivisions, or under the authority of charitable organizations that render services to the community or its citizens, in accordance with this division.

It is my understanding pursuant to telephone conversations between you and members of my staff that individuals performing community service work under R.C. 2951.02(G) do not receive any salary or remuneration for their services. This fact proves to be dispositive of your first question.

R.C. 4123.38 would require a political subdivision or agency of a political subdivision to contribute to the workers' compensation fund on behalf of individuals performing community services work pursuant to R.C. 2951.02(G) if these individuals are covered by the Workers' Compensation Act, R.C. Chapter 4123. As I have recently had occasion to note in 1982 Op. Att'y Gen. No. 82-007, however, "one of the fundamental elements necessary for the compensability of claims for workers' compensation benefits is the existence of the relation of employer and employee. Absent this relationship the provisions of the Workers' Compensation Act have no application. Acklin Stamping Co. v. Kutz, 98 Ohio St. 61, 120 N.E. 229 (1918)." For the purposes of the Workers' Compensation Act, the employer/employee relationship depends on an appointment or an express or implied contract for hire. Industrial Commission v. Bateman, 126 Ohio St. 279, 185 N.E. 50 (1933). In Coviello v. Industrial Commission of Ohio, 129 Ohio St. 589, 196 N.E. 661 (1935), the Court held that "[i]t is impossible to have a 'contract for hire' without an obligation that the person denominated the employer pay the person employed." (Syllabus, paragraph one.)

It seems that individuals performing community service work pursuant to R.C. 2951.02(G) are not serving under an appointment. The term appointment is not defined for the purposes of R.C. Chapter 4123 and, accordingly, must be given its plain meaning. R.C. 1.42. "Appointment" is defined in Black's Law Dictionary (5th Ed. 1979) at 91 as "[t]he designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust." An individual performing service pursuant to R.C. 2951.02(G) would not appear to be discharging the duties of some office or trust. Further, as I noted above, it is my understanding that individuals performing community service work under R.C. 2951.02(G) receive no wages or remuneration for their services and, therefore, are not working under a contract for hire. Without an employer/employee relationship, the provisions of the Workers' Compensation Act, including R.C. 4123.38 which requires contribution to the fund, do not apply. Consequently, I must conclude that political subdivisions and agencies which enjoy community service work performed by individuals pursuant to R.C. 2951.02(G) are not required to make contributions to the workers' compensation fund on behalf of those individuals.

With respect to unemployment compensation contributions, political subdivisions and their agencies or instrumentalities have the option, under R.C. 4141.242, of making contributions to the unemployment compensation fund pursuant to R.C. 4141.25, or to reimburse the fund for claims paid out, on behalf of individuals in their employment. Absent an employment relationship, neither statute applies. R.C. 4141.242 (public entity required to contribute to the unemployment compensation fund may pay to the administrator, in lieu of

contributions, an amount equal to the amount of benefits attributable to "service in the employ of the public entity"; R.C. 4141.25 (employer's contribution is based upon amount of wages paid by employer). R.C. 4141.01(B)(1) defines employment as:

(a) Services performed for wages under any contract of hire, written or oral, express or implied, including service performed in interstate commerce and service performed by an officer of a corporation, without regard to whether such service is executive, managerial, or manual in nature, and without regard to whether such officer is a stockholder or a member of the board of directors of the corporation;

(b) Services performed by an individual for remuneration unless it is shown to the satisfaction of the administrator that such individual:

(i) Has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;

(ii) That such service is outside the usual course of the business for which service is performed; and

(iii) That such individual is customarily engaged in an independently established trade, occupation, profession, or business. (Emphasis added.)

Since you have indicated that individuals who perform community service work receive no wages or remuneration, such individuals are not in the employment of the subdivision or agency for the purposes of R.C. 4141.242 or R.C. 4141.25. Consequently, I must conclude that political subdivisions and agencies are not required to contribute to the unemployment compensation fund on behalf of individuals performing community service work pursuant to R.C. 2951.02(G).

In response to your second question, I note that it is the longstanding rule of law in Ohio that political subdivisions and their agencies have only those powers which are expressly conferred or necessarily implied by statute. See Elder v. Smith, Auditor, 103 Ohio St. 369, 133 N.E. 791 (1921); Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875). If a particular subdivision or agency has the statutory authority to purchase insurance for its protection and there is no limitation provided by the statute, the total amount of coverage to be purchased is a policy decision within the reasonable discretion of the particular subdivision or agency. The necessity for coverage and the amount of coverage that should be purchased in any particular situation are not, therefore, issues upon which I can properly opine.

Based on the foregoing analysis, it is my opinion, and you are advised, that political subdivisions and agencies which accept the services of persons on probation to perform community services pursuant to R.C. 2951.02(G), and which do not provide any compensation or remuneration to such individuals, are not required to make contributions to either the workers' compensation fund or the unemployment compensation fund on behalf of those individuals.