

1964

FIREMEN: TOWNSHIP—VOLUNTEER, DONATION OF SERVICES—QUALIFICATIONS OF “EMPLOYEES” UNDER WORKMEN’S COMPENSATION LAWS—NO REMUNERATION — §4123.03 R.C.

**SYLLABUS:**

Volunteer firemen who donate their services to townships which have enlisted such services may qualify as “employees” and thus be eligible for workmen’s compensation coverage under the provisions of Section 4123.03, Revised Code, without receiving token remuneration from such townships.

Columbus, Ohio, April 16, 1958

Hon. Everett Burton, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir:

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

“This office has received several requests from Township Boards of Trustees with respect to qualifying members of Volunteer Fire Departments for benefits under the Workmen’s Compensation law.

“In nearly all of these cases the firemen in question donate their services and receive no compensation therefor. Section 4123.03 of the Ohio Revised Code provides that any political sub-division may enter into a special contract with the Industrial Commission for the coverage of volunteer firemen. Since the Workmen’s Compensation Law applies to employed persons, the answer to one question is obscure, and your opinion is requested as to the same:

‘Is it necessary that the Township or other political sub-division in question make payment of some token remuneration, such as \$1.00 per year, to such volunteer firemen to constitute them as employees in order to qualify them for benefits under the Workmen’s Compensation Law, or may this fiction be dispensed with?’ ”

Your attention is invited to Section 4123.03, Revised Code, a pertinent part of which provides as follows:

“If the state or any political subdivision thereof, including any county, township, municipal corporation, school district, and

any institution or agency of the state, employs, *enlists, recruits, solicits*, or otherwise secures the services of any organization, association, or group of persons and the members thereof, including *volunteer firemen*, and auxiliary policemen and patrolmen, the individual members of which are not, by reason of such service, employees as defined in division (A) (1) of section 4123.01 of the Revised Code \* \* \* the state or such political subdivision may contract with the industrial commission for coverage of such persons under sections 4123.01 to 4123.94, inclusive, of the Revised Code, while in the performance of such service. Such contract shall contain provisions for the determination of premiums, *average weekly wages or their equivalent*, the identity of the persons covered, and such other provisions as are necessary in each case to establish or define the risk and determine claims arising thereunder.” (Emphasis added)

It appears evident that the situation contemplated in your letter falls under the purview of Section 4123.03, Revised Code, inasmuch as it deals with volunteer firemen whose services have been enlisted by various townships.

Section 4123.52, 4123.56 to 4123.62, inclusive, and 4123.64, Revised Code, provide in part that workmen’s compensation payments shall be based on sixty-six and two-thirds per cent of the injured or killed workman’s average wage, not to exceed \$40.25 per week. According to your letter, the firemen in question donate their services and receive no compensation therefor. It is noteworthy that Section 4123.03, Revised Code, has no provision requiring volunteer firemen to receive salaries for their services. The type of contract suggested in your letter could hardly be considered as a contract of hire. Regardless of this circumstance, however, it would be impossible to determine a worker’s average weekly wage if he were merely paid a token remuneration of \$1.00 per year. Thus, in view of these facts, it can readily be perceived that the purpose of that part of Section 4123.03, Revised Code, in regard to the making of a contract between the township involved and the industrial commission, is to determine among other things a reasonable basis for compensation in lieu of the fact that the firemen in question do not have weekly wages from which an average could be determined.

Therefore, it is my opinion and you are accordingly advised that volunteer firemen who donate their services to townships which have enlisted such services may qualify as “employees” and thus be eligible for

workmen's compensation coverage under the provisions of Section 4123.03, Revised Code, without receiving token remuneration from such townships.

Respectfully,

WILLIAM SAXBE

Attorney General