

## OPINION NO. 74-105

## Syllabus:

Members of a municipal police department who assist a county sheriff outside the corporate limits at the direction of their superiors are eligible for workmen's compensation benefits pursuant to R.C. 4123.025 and 4123.54.

To: Ronald W. Vettel, Ashtabula County Pros. Atty., Jefferson, Ohio  
By: William J. Brown, Attorney General, December 18, 1974

I have before me your request for my opinion, which poses the following question:

"Are Members of a Municipal Police Department covered by Workmen's Compensation when called to assist the County Sheriff, outside of the Municipal jurisdiction, on official police business?"

R.C. 4123.54, which provides for compensation for employees in case of injury or death, reads in part as follows:

"Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely self-inflicted, is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational

disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94, inclusive, of the Revised Code.

" \* \* \* \* \* " (Emphasis added.)

The term "employee" as used in R.C. 4123.54 is defined by R.C. 4123.01, which reads in part as follows:

"As used in Chapter 4123. of the Revised Code:

"(A) 'Employee,' 'workman,' 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 townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education;

" \* \* \* \* \* " (Emphasis added.)

Thus it appears that members of a municipal police department are "employees" as that term is used in R.C. 4123.54 and are covered by workmen's compensation without regard to geographical location so long as they are acting in the course of their employment. This conclusion is reinforced by Opinion No. 71-073, Opinions of the Attorney General for 1971. In that Opinion, the statutes previously quoted were interpreted to provide workmen's compensation coverage for firemen traveling outside the state in the course of their employment. The courts have held that it is the employment relationship, not the location of the employee at the time of the injury, which is determinative of the employee's right to workmen's compensation benefits. Prendergast v. Industrial Commission, 136 Ohio St. 535 (1940); Bowen v. Industrial Commission, 61 Ohio App. 469 (1939).

The Ohio Supreme Court has held that for an employee to be injured in the course of his employment, such injury must occur during the employment and at a place where such employee has been ordered to perform duties pursuant to the employment. Cleveland, Cincinnati, Chicago and St. Louis Railway Co. v. Potter, 113 Ohio St. 591 (1925); Cleveland, Akron and Columbus Railway Co. v. Workman, 66 Ohio St. 509 (1902). In the instant case members of a municipal police department, when assisting the county sheriff, would be doing so during the time of their employment and upon the orders of their superiors. Thus such persons would be acting in the course of their employment and would be covered by workmen's compensation pursuant to R.C. 4123.54.

This conclusion may also be reached through the provisions of R.C. 4123.025, which reads as follows:

"Any person, other than those covered by section 4123.03 of the Revised Code, who is injured, and the dependents of a deceased employee who is killed as the direct result of performing any act at the request or order of a duly authorized public official of the state, or any institution or agency thereof, or any political subdivision thereof, including a county, township, or municipal corporation, in time of emergency shall be entitled to all the benefits of Chapter 4123. of the Revised Code. Any payments made from the state insurance fund pursuant to this section shall be charged to the surplus fund as created by division (B) of section 4123.34 of the Revised Code, in order to encourage participation of all persons in times of emergency."

(Emphasis added.)

Since a county sheriff presumably would only request assistance from a municipal police department in time of emergency, the members of such department would be covered by workmen's compensation, pursuant to R.C. 4123.025, while assisting the sheriff outside the boundaries of the municipality.

It is my understanding that it has been the long-standing administrative practice of the Industrial Commission and the Bureau of Workmen's Compensation to award compensation to persons injured in the circumstances mentioned above. Such long-standing administrative practice must be accorded great weight in the construction of ambiguous statutes. R.C. 1.49(F); Jones Metal Products Co. v. Walker, 29 Ohio St. 2d 173, 181 (1972); Dayton Newspapers, Inc. v. Dayton, 28 Ohio App. 2d 95, 101 (1971); Opinion No. 72-025, Opinions of the Attorney General for 1972. Thus the administrative practice in the instant case supports the interpretation of R.C. 4123.025 and 4123.54 reached above.

It should be noted, however, that there is no statutory authority for a municipal police department to assist a county sheriff outside the limits of the municipal corporation, except in the event of riot, insurrection, or invasion. (R.C. 311.07). Similarly the legislative body of a municipality lacks the authority, within its power of local self-government, to authorize members of the municipal police department to act outside the corporate limits. Opinion No. 69-043, Opinions of the Attorney General for 1969. Thus there appears to be no general authority for a municipality to send members of its police department to assist a county sheriff outside the corporate limits.

It should also be noted that policemen and firemen are excluded from the coverage of R.C. Chapter 4123 by R.C. 4123.02 when the policemen or firemen are eligible to participate in a policemen's or firemen's pension fund established or maintained by a municipal corporation. However, since the enactment of R.C. Chapter 742, which established the Police and Firemen's Disability and Pension Fund for the entire state, such pension funds may no longer be maintained by an individual municipality. See R.C. 741.32, 742.26, and 742.27. It appears, though, that the legislative intent in enacting R.C. 4123.02 was to prevent duplication of benefits and that R.C. Chapter 742 must be read in pari materia with R.C. 4123.02 to achieve that intent. Thus

municipal policemen are eligible for workmen's compensation only if they are not covered by the Police and Firemen's Disability and Pension Fund.

In specific answer to your question, it is my opinion and you are so advised that members of a municipal police department who assist a county sheriff outside the corporate limits at the direction of their superiors are eligible for workmen's compensation benefits pursuant to R.C. 4123.025 and 4123.54.