my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2986.

APPROVAL, NOTES OF MOSCOW CONSOLIDATED RURAL SCHOOL DISTRICT, CLERMONT COUNTY, OHIO—$3,261.00.

COLUMBUS, OHIO, August 2, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2987.

APPROVAL, NOTES OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—$5,920.00.

COLUMBUS, OHIO, August 2, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2988.

WORKMEN'S COMPENSATION LAW—PROFESSOR OF OHIO STATE UNIVERSITY NOT ENTITLED TO BENEFITS OF SAID LAW WHEN.

SYLLABUS:

A professor in the employ of Ohio State University who during his vacation period attends meetings not required or contemplated by his contract of employment, is not performing services for such University and is not an employee within the meaning of the Workmen's Compensation Law even though he is attending such meetings as a representative of Ohio State University, and, therefore, would not be entitled to the benefits of the Workmen's Compensation Law of Ohio.

COLUMBUS, OHIO, August 2, 1934.

HON. GEORGE W. RIGHTMIRE, *President, Ohio State University, Columbus, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"A question of importance has arisen here in connection with the operation of the State Compensation Law upon members of the Uni-

versity faculty. Service of a faculty member is about as follows:

In each University year which begins July 1 and ends June 30, a professor renders three quarters of service and the fourth quarter of the year is normally a time of vacation for him from regular University duties. Payment is made for the service rendered in twelve monthly installments, so that a professor earns a year's salary in three quarters (nine months) and is paid therefor by twelve payments.

In the vacation quarter he may attend national or regional meetings of professors interested in the same field, for instance, Geology or Chemistry, and in attendance at such meetings will usually take part in the discussions and proceedings, and may indeed present some papers which he has prepared in the preceding months. During all of this vacation quarter a professor is on the University pay roll and is not, in any way, dismissed from University service but after the expiration of the vacation quarter continues his normal duties as before. The terms of his election annually provide for quarters of service and a quarter of vacation and the election is made for twelve months.

With these conditions in mind the question which arises now is this: suppose that during this vacation quarter a professor attends one of these national or regional professional meetings for participation therein as a representative from the Ohio State University, and some time during the trip, without fault of his own is injured or dies, is he or his family entitled to compensation under the laws of Ohio?"

The Ohio State University is an employer within the meaning of the Workmen's Compensation Law of Ohio, the definition of which is found in Section 1465-60, General Code, which section reads in part as follows:

"The following shall constitute employers subject to the provisions of this act:

1. The state and each county, city, township, incorporated village and school district therein.

* * * * * *"

The term employee is also defined in the Workmen's Compensation Law and the definition applicable to the question before us is found in that part of Section 1465-61, General Code, which reads as follows:

"The term '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.

* * * * * *"

The Workmen's Compensation Law further provides that all employees of employers, as such terms are defined in the act, shall be entitled to receive com-

pensation for injuries sustained in the course of their employment. Section 1465-68, General Code, provides in part:

> "Every employe mentioned in section 1465-61, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on or after January 1st, 1914, shall be paid such compensation out of the state insurance fund for loss sustained on account of such injury or death as is provided in the case of other injured or killed employes, and shall be entitled to receive such medical, nurse and hospital services and medicines and such amount of funeral expenses as are payable in the case of other injured or killed employes.
> * * * * * *"

Under the facts, as set forth in your letter, the professors who are employed by Ohio State University are employed for twelve months; however, they are given a vacation of one-fourth the year, and, as I interpret your communication, during that period they are free from direction and control and may act according to their own dictates and judgment. They may desire to participate in regional meetings or in educational meetings in different parts of the country and may be invited to attend such meetings as representatives of the University. I understand, however, that their contract of employment does not require attendance at such meetings nor the presentation of papers to nor the addressing of such associations.

An employee is entitled to the benefits of the Workmen's Compensation Law only while carrying out his contract of employment and performing services under the same. The mere fact that he may sustain an injury during the time covered by the payment for his services does not entitle him to the benefits of the law unless he is injured because of some hazard of the employment.

In the case of *Fassig* vs. *State, ex rel.* 95 O. S. 232, the Supreme Court of Ohio held, as shown by the language of the fifth branch of the syllabus, that:

> "The provisions of Section 35, Article II of the Constitution, and in the statute with reference to an injury received in the course of employment refer only to an injury which is the result of or arises out of the employment. Such provisions do not cover any injury which has its cause outside of and disconnected with the employment, although the employe may at the time have been engaged in the work of his employer in the usual way."

It is to be noted that there it is pointed out that even though an employee may be engaged in his usual work in the usual way, if he is injured by something which is not a hazard of the employment he is not entitled to receive compensation from the state insurance fund under the provisions of the Workmen's Compensation Law.

Another case somewhat in point is that of *Industrial Commission* vs. *Weigandt,* 102 O. S. 1, the second and third branches of the syllabus of which read as follows:

> "2. The test of right to an award from the insurance fund under the Workmen's Compensation Law for injury in the course of employ-

ment, is not whether there was any fault or neglect on the part of the employer, or his employes, but whether the employment had some causal connection with the injury either through its activities, its conditions or its environments.

"3. The provisions of the law do not cover an injury which had its cause outside of and disconnected with the business in which an injured workman was employed."

A more recent case along that line decided by the Supreme Court is that of *Industrial Commission* vs. *Ahern,* 119 O. S. 41, wherein it was held:

"1. No custom, rule or regulation, adopted by an employer, will be permitted to place an employee in his employment, if no employment in fact existed at the time of the injury, or if such custom, rule or regulation materially changes the ordinary and commonly accepted meaning of the phrase 'in the course of employment'.

2. Under Section 35, Article II of our Constitution, and the law enacted pursuant thereto, the phrase, 'in the course of employment,' connotes an injury sustained in the performance of some required duty done directly or incidentally in the service of the employer.

3. An employee who is injured when engaged, not in the service of an employer, but in pursuance of the employee's private and personal business, disconnected with the employment, is not entitled to compensation under the Workmen's Compensation Law."

The facts in that case were that Miss Ahern was working for a large department store in the City of Cincinnati. The employer had a rule, amounting almost to a request, whereby its employees were permitted and encouraged, during the forepart of the morning and during working hours, to go to any part of the store for the purpose of doing personal shopping, that is, purchase articles for their personal use, and no deduction was made from their wages for the time so used. Miss Ahern was taking advantage of that privilege and went to a department, other than the one in which she was employed, to look at a rug for her own use and while doing that she fell and was injured.

The Court held that she did not sustain an injury so as to entitle her to the benefits of the law. And at page 46, it is stated:

"At the time of her injury the defendant in error was not acting for her employer, nor engaged in its service; she was exercising a personal privilege which in no wise fell within the employment for which she had been engaged; she was seeking a personal benefit; and at the time of her injury occupied the relation of a customer to her employer, and not the relation of an employee; she was not under her employer's control. * * * The privilege which she did exercise was not required under the terms of her contract, but was purely personal, and its exercise was not incidental to the *performance of any required duty.*" (Italics ours.)

As I understand the statement of facts presented by you, the professors, during this quarterly vacation, have no connnection with the University save

and except that during that time they are paid a salary. They are not subjected to any direction or control by the University under their contract of employment. They are in the same position as they are in the evenings during the time of their regular emp'oyment when they may attend a lecture or deliver a talk at some educational club or attend some meeting where educational problems are being discussed.

The test of the right to receive compensation is not whether or not a salary is being paid for the time during which the injury occurred but whether or not the employee was performing some service required by or incidental to his contract of hire.

I am not unmindful of the decision of the Supreme Court in the case of *Industrial Commission* vs. *Davidson,* 118 O. S. 180. In that case, however, the decision turned upon the particular state of facts therein. The Court held, as shown by the syllabus, that:

> "1. The fact that a regular and continuously employed employee of an employer who is subject to the burdens and entitled to the benefits of the workmen's compensation law receives an injury at a time when he is in the course of his employment, both with such employer and in the course of a casual employment with another employer, will not prevent him, or in case of his death, his dependents, from participating in the state insurance fund.
>
> 2. An employee is in the course of his employment while he is performing the obligation of his contract of employment.
>
> 3. An accident incident to or the result of an act done while in the course of his employment, which act is appropriate and helpful to the accomplishment of the purpose of his employment, is a hazard of such employment."

In that case the court found, as a matter of fact, that Professor Davidson was performing a duty required by his contract of employment. He was dean of the department of education of Ohio Northern University. He had been employed by the board of education of Green Springs to deliver an address at the High School commencement and was injured while rendering such service. Relative thereto, the Supreme Court said:

> "In the instant case, as a part of his employment he had gone to the village of Green Springs to interest the graduating class of its high school in his employer's University; to attract its members to become students at his employer's University. In the performance of his obligation to his employer, it was appropriate and helpful to the accomplishment of the purpose for which he had been employed for him to conform to the request of the class that he wear the flower which they had adopted as their class flower."

It was the opinion of the Supreme Court that there was evidence in that case which would tend to prove that Professor Davidson was a well-known high school commencement speaker and much in demand in north-western Ohio and elsewhere for commencement addresses, that the board of trustees had taken that fact into consideration when hiring him, expecting him to make such addresses

and in that way attract graduates from the high schools to the University, and further that the compensation he would receive from the boards of education for making these addresses would augment his regular salary. It was upon that evidence that the Court based its finding that:

> "In the instant case, as a part of his employment he had gone to the village of Green Springs to interest the graduating class of its high school in his employer's University;"

The facts presented in your inquiry do not indicate that any such requirement is a part of the contracts of employment entered into by the professors you mention, and I do not believe that the courts would construe the law to apply to such a state of facts as you present. However, the determination of whether or not an employee is in the course of his employment depends upon the facts in each particular case.

Therefore, in specific answer to your inquiry, it is my opinion that a professor in the employ of Ohio State University who during his vacation period attends meetings not required or contemplated by his contract of employment, is not performing services for such University and is not an employee within the meaning of the Workmen's Compensation Law even though he is attending such meetings as a representative of Ohio State University, and, therefore, would not be entitled to the benefits of the Workmen's Compensation Law of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2989.

CITY—UNAUTHORIZED TO CREATE LIEN FOR WATER RENTS BY ORDINANCE OR RULES AND REGULATIONS ADOPTED FOR MANAGEMENT OF MUNICIPALLY OWNED WATER WORKS.

SYLLABUS:

A city may not, by ordinance or by rules and regulations, adopted for the management of its municipally owned waterworks, create a lien for water rents. (Hohly, Director, et al., vs. State, ex rel., 128 O. S. 257.)

COLUMBUS, OHIO, August 3, 1934.

HON. JOHN I. MILLER, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows: