

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3067 was overruled
by 1991 Op. Att'y Gen. No. 91-008.

3067

A MEMBER OF A SOLDIERS RELIEF COMMISSION IS AN EMPLOYEE OF THE COUNTY AND MUST APPLY TO THE BOARD OF COUNTY COMMISSIONERS TO ATTEND AT THE COUNTY EXPENSE A MEETING OR CONVENTION—THE LIMIT OF AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS OVER THE SOLDIER'S RELIEF COMMISSION FUNDS IS TO ALLOWING EXPENSES AND COMPENSATION TO MEMBERS—§§5901.11, R.C., 5901.04, R.C., 5901.06, R.C., 5901.07, R.C., 325.20, R.C., 5901.11, R.C.

SYLLABUS:

1. A member of a soldiers' relief commission appointed pursuant to Section 5901.02, Revised Code, should be considered an employee of the county within the purview of Section 325.20, Revised Code; and under said Section 325.20 such a member, and any employee of such a commission, is required to obtain the authorization of the board of county commissioners to attend, at county expense, an association meeting or convention.

2. The authority of the board of county commissioners over funds of the soldiers' relief commission is limited to making the necessary levy under Section 5901.11, Revised Code, and allowing expenses and compensation to members under Section 5901.04, Revised Code.

Columbus, Ohio, June 14, 1962

Hon. William B. Haines, Chief, Division of Soldiers' Claims
Adjutant General's Department
State of Ohio, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

Section 5901.11, Ohio Revised Code, sets forth the manner in which the amount of funds necessary for soldiers relief in a county shall be determined. This section also establishes a maximum levy of five-tenths mill per dollar of assessed value of property of the county for this purpose.

"*Section 5901.04*, Ohio Revised Code, provides for payment of county soldiers relief commissioners actual expenses and a fair compensation for their services.

"*Sections 5901.06 and 5901.07*, Ohio Revised Code, provides for the hiring of investigators, clerks and county veterans' service officers; duties of these classes of individuals are broadly defined and their compensation is provided from funds appropriated to the commission under Section 5901.11, Ohio Revised Code.

"*Section 325.20*, Ohio Revised Code, outlines the procedures for approval of and payment for travel expenses of county officers, deputies or employees for attending association meetings or conventions. This section requires the head of the county office desiring such travel to make application to the board of county commissioners in writing showing the necessity of such attendance and probable costs to the county. If a majority of the board of county commissioners approves the application, such expenses shall be paid from the money appropriated to such office for traveling expenses.

"A question now arises whether provisions of Section 325.20, Ohio Revised Code, apply to members of county soldiers relief commissions and their employees, who attend meetings and conferences within the state, such meetings and conferences dealing with the fields of veterans' relief and assistance, and at which the attendance of aforesaid soldiers relief commission members or employees is considered both profitable and necessary in the furtherance of improved relief and service to our veterans and their dependents.

"Is a Board of county commissioners authorized to require application for approval for travel within the state by members of county soldiers relief commissions or their employees? Or does the control of such travel—the authority for approval of and payment for travel rest with the duly appointed members of the county soldiers relief commission?"

"Further, is a board of county commissioners empowered in any way to control the expenditure of appropriated soldiers relief commission funds beyond the provisions stated in Section 5901.04, Ohio Revised Code?"

Section 325.20, Revised Code, to which you refer, reads as follows:

"Except as otherwise provided by law, no elected county officer, and no deputy or employee of the county, shall attend, at county expense, any association meeting or convention, unless authorized by the board of county commissioners. Before such allowance may be made, the head of the county office desiring it shall make application to the board in writing showing the necessity of such attendance and the probable costs to the county. If a majority of the members of the board approves the application, such expenses shall be paid from the moneys appropriated to such office for traveling expenses."

Your first question asks whether the above section of law is applicable to members of county soldiers' relief commissions. Thus, the pertinent questions appear to be (1) whether a member of a county soldiers' relief commission is an elected county officer, or deputy, or employee of the county, within the purview of the section, and (2) whether an expenditure for expenses of a member attending an association meeting or convention is "at county expense."

While at one time Section 1 of Article X, Ohio Constitution, provided that all county officers should be elected, this requirement was removed by an amendment adopted on November 7, 1953. Thus, if a certain county position qualifies as an office under the general rule as to what

constitutes a public office, the person holding such office is a county officer regardless of the fact that he may not have been elected to such office.

In this regard, I held in Opinion No. 2840, Opinions of the Attorney General for 1962, issued on February 28, 1962, that a county director of civil defense *appointed* pursuant to Section 5915.06, Revised Code, is a county officer.

In that opinion I noted that a county director of civil defense meets the qualifications of a public officer in that he is appointed pursuant to law, has definite duties, and exercises a portion of the sovereignty of the state (citing 44 Ohio Jurisprudence 2d, Public Officers, Section 2, at pages 484 and 485).

Section 5901.02, Revised Code, provides for a five-member "soldiers' relief commission" in each county of the state. Members are *appointed* by a judge of the court of common pleas. The main duty of the commission is to administer the laws by which relief is given to needy soldiers, sailors, marines, and airmen, and certain of their needy relatives. Under Section 5901.12, Revised Code, the commission has the authority to determine what persons will receive such relief.

A member of a soldiers' relief commission is appointed to that position pursuant to law, has definite duties in that position, and exercises a portion of the sovereignty of the state in that position. In my opinion, therefore, such a member is a public officer within the general rule as to public officers discussed earlier.

While a member of a soldiers relief commission is a county officer, he is not an elected county officer. Nor could he be termed a "deputy" within the meaning of Section 325.20, Revised Code, as the word "deputy" connotes a person acting for another. Whether he can be termed an employee of the county within the meaning of that section remains to be determined.

An employee is generally differentiated from an officer in that, for one reason, the employee works under the direction of another while the officer does not. Under a broad interpretation of the word employee, however, it can be said that since all personnel of the county work for the county, they are employees of the county.

At the time that Section 325.20, *supra*, was enacted, then Section 2981-1, General Code, 119, Ohio Laws, 581 (1941), the constitutional provision as to county officers being elected had been deleted from the Constitution. It might thus be argued that the legislature, realizing that a county might have officers who are appointed rather than elected, intended to limit the requirement of county commissioner approval to those county officers who are elected, and to exempt other county officers. Reading all of the provisions of said Section 325.20 together, however, it appears to me that the intent was to require all personnel of the county who wish to travel at county expense to association meetings and conventions to first obtain authorization of the board of county commissioners. I am, therefore, of the opinion that the word "employee" as used in Section 325.20, *supra*, should be interpreted in its broad sense to include all personnel of the county other than elected officers and deputies, including county officers who are appointed rather than elected.

As to whether an expenditure for expenses of a member of the soldiers' relief commission attending an association meeting or convention is "at county expense," Section 5901.11, Revised Code, reads as follows:

"On the last Monday in May in each year, the soldiers' relief commission shall meet and determine from the lists provided for in section 5901.08 of the Revised Code the probable amount necessary for the aid and relief of indigent persons for the ensuing year, together with an amount sufficient, in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief are established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the board of county commissioners, which, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief."

Since the expenses of the members of the commission are necessarily incident to the providing of aid and relief to soldiers, etc., I am of the opinion that said compensation and expenses should be paid out of funds available pursuant to the tax levied by Section 5901.11, *supra*. In this regard, it is apparent that such funds are county funds, and I thus conclude that an expenditure from such funds is "at county expense."

Under Section 5901.04, Revised Code, upon presentation of an itemized statement, the board of county commissioners "shall allow the per-

sons composing the soldiers' relief commission the actual expenses incurred in the performance of their duties, and a fair compensation for their services." While members are thus allowed actual expenses, this section must be read with Section 325.20, *supra*, and expenses for attending an association meeting or convention may be paid only where the board of county commissioners has authorized the member's attendance at such meeting or convention.

In view of the foregoing, I am constrained to conclude that the provisions of Section 325.20, Revised Code, requiring authorization of the board of county commissioners for certain expense payments, is applicable to members of the soldiers' relief commission.

As to employees of soldiers' relief commissions, Section 5901.06, Revised Code, provides that such a commission may employ such investigators and clerks as are necessary to carry on relief work when the necessity arises, and Section 5901.07, Revised Code, provides that such a commission may employ a county veterans' service officer and the necessary clerks, stenographers and other personnel to assist him. Compensation and expenses of the employees of the commission are paid out of the funds appropriated under Section 5901.11, *supra*.

It already having been determined that members of a county soldiers' relief commission are county officers, it follows that employees of the commission are employees of the county. Further, since expenses of such employees are paid out of funds appropriated under Section 5901.11, *supra*, payment of such expenses is a county expense. Accordingly, I am of the opinion that the provisions of Section 325.20, *supra*, are applicable to such employees as well as to the members of the commission.

Coming to your second question, the authority of the board of county commissioners pertaining to the soldiers' relief commission is limited to making the necessary levy under Section 5901.11, *supra*, and to the allowing of expenses and compensation to members under Section 5901.04, *supra*. I have not found any provision of law which could be construed to give the board of county commissioners any further control over the expenditure of funds by the soldiers' relief commission.

In summary, therefore, it is my opinion and you are advised:

1. A member of a soldiers' relief commission appointed pursuant to Section 5901.02, Revised Code, should be considered an employee of

the county within the purview of Section 325.20, Revised Code; and under said Section 325.20 such a member, and any employee of such a commission, is required to obtain the authorization of the board of county commissioners to attend, at county expense, an association meeting or convention.

2. The authority of the board of county commissioners over funds of the soldiers' relief commission is limited to making the necessary levy under Section 5901.11, Revised Code, and allowing expenses and compensation to members under Section 5901.04, Revised Code.

Respectfully,
MARK MCELROY
Attorney General