

the state of facts mentioned in your letter also falls within the prohibition of Section 12912, General Code.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a member of a board of township trustees furnishing groceries upon order of the board of township trustees and receiving compensation therefor from such board, is subject to the provisions of Section 12910 and Section 12912, General Code, which prohibit a member of a board of township trustees from being interested in a contract or profits of a contract for the purchase of property or supplies for such township.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

4711.

APPOVAL, BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE  
 SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$2,804.21.

COLUMBUS, OHIO, October 28, 1932.

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

4712.

WORKMEN'S COMPENSATION—RIGHT OF POLICEMEN AND FIRE-  
 MEN TO PARTICIPATE WHERE THEY HAVE A PENSION FUND—  
 DEPENDENTS ENTITLED TO BENEFITS REGARDLESS OF MONEY  
 RECEIVED FROM OTHER SOURCES.

*SYLLABUS:*

1. *The Industrial Commission is authorized to pay compensation to dependents of employees as the term "employee" is defined in the Workmen's Compensation Law of Ohio.*

2. *Policemen and firemen of villages are employees within the meaning of the Workmen's Compensation Law of Ohio regardless of whether or not said village has provided a policemen or firemen's fund.*

3. *Policemen and firemen of cities who are eligible to participate in a policemen or firemen's pension fund because of the particular injury or disability suffered are not employees within the meaning of the Workmen's Compensation Law, unless said policemen or firemen are paid from said fund an amount less than the compensation that is provided by the Workmen's Compensation Law of Ohio for a like injury and disability.*

4. *All dependents of injured employees who die as a result of injuries sustained in the course of employment are entitled to benefits provided for by the Workmen's Compensation Law of Ohio. There is no provision for deducting from*

*any dependent's award compensation which they receive from sources other than the Workmen's Compensation Law.*

COLUMBUS, OHIO, October 28, 1932.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent request for my opinion which reads:

“The Commission desires your opinion relative to the following questions relative to General Code, Section 1465-61, Sub-section 1, and specifically that portion of said paragraph concerning the payment of compensation to firemen and policemen as amended by the last General Assembly effective July 8, 1931.

“1. (a) Does the provision of the above-mentioned section include the dependents of firemen and policemen who are killed in the course of and arising out of their employment?

(b) If such dependents are not to be included in the provisions of this section are they entitled to the death award as provided for in General Code Section 1465-82, without the deduction of any award which they receive from a municipal firemen or policemen's pension fund?

(c) If no provision is made in the regulations of the policemen or firemen's pension fund for the payment of funeral and medical bills, can the same be paid from the State Insurance Fund?

“2. (a) If it is your opinion that the dependents of firemen or policemen who are killed in the course of employment come within the provisions of General Code Section 1465-61, Sub-section 1, can an award be made to such widow if she has been awarded a monthly award from a policemen or firemen's pension fund which monthly sum is less than the monthly payment to which she would be entitled under the provision of Section 1465-82, but the continuance of such payments from the pension fund being contingent on the beneficiary remaining a widow, and during her good behavior. If such widow is entitled to an award from the State Insurance Fund, how should such award be computed?

(b) If a fireman or policeman is survived by a widow and one or more dependent children under sixteen years of age and the widow is awarded compensation from the pension fund with a monthly award to continue during her widowhood and good behavior and in addition is granted an additional monthly award for each child until such child reaches the age of sixteen years, the aggregate being less than the monthly payment to which such widow and children would have received from the State Insurance Fund, in such instance are the children entitled to an award under the provisions of Section 1465-82 and, if so, how should the same be computed?”

Your questions involve the disbursement of the state insurance fund to policemen and firemen. The Industrial Commission is authorized to disburse the state insurance fund in Section 1465-72, General Code, which in so far as applicable reads as follows:

"The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. \* \* \*

This section therefore authorizes the commission to disburse the fund to employees injured, or to the dependents of such employees who have been killed in the course of their employment.

The term "employee" has a definite meaning in connection with the Workmen's Compensation Law of Ohio and is defined in Section 1465-61, General Code. The term is therein defined, in so far as it applies to this question, as follows:

"The terms 'employe', '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. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds. \* \* \*

All of your questions depend upon the construction of this provision of the statute.

The statute first provides that the term "employee" shall include all policemen or firemen. It then exempts from the operation of the statute city policemen or firemen who are eligible to participate in a policemen or firemen's pension fund of the city. The section reads: "Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds," etc. Since nothing in the act shall apply to such policemen or firemen and said section being part of that act, such policemen and firemen are not included in the definition of an employee as defined by the legislature.

It must first be noted that this exemption is only to policemen and fire-

men of cities and does not apply to policemen or firemen of villages. Therefore, all policemen and firemen of villages are employees within the meaning of the act, and they and their dependents are entitled to receive compensation as provided for in the Workmen's Compensation Law regardless of whether or not they receive any disbursement from a policemen or firemen's pension fund of the village.

Considering further, however, the policemen and firemen of cities, the statute further provides that if such injured policeman or fireman who is eligible to participate in a city pension fund shall receive less from that pension fund than the amount provided by the Workmen's Compensation Law, he shall be an employee for the purpose of receiving compensation in an amount equal to the difference between that which he receives from the pension fund and the amount he would be entitled to receive from the state insurance fund.

Therefore, construing this section, I believe that policemen and firemen of villages are employees within the meaning of the Workmen's Compensation Law. The policemen and firemen of cities who are eligible to participate in the policemen's or firemen's pension fund, established and maintained by municipal authority, are not employees within the meaning of the law unless the amount which they receive from said pension fund is less than the amount provided for by the Workmen's Compensation Law. Dependents of policemen and firemen of villages, who have been killed in the course of their employment, are entitled to the full benefits of the Workmen's Compensation Law. The dependents of policemen and firemen of cities, who are killed in the course of their employment, are entitled to the benefits of the Workmen's Compensation Law if the policemen and firemen are not eligible to participate in the policemen or firemen's pension fund; such dependents would also be entitled to the benefits of the Workmen's Compensation Law if the injured policemen and firemen were eligible to participate in the policemen and firemen's pension fund but did not receive from such pension fund as much as he would be entitled to receive from the state insurance fund. In no event is there any provision for the Industrial Commission to deduct anything because of the amount paid from any policemen or firemen's pension fund from the compensation paid from the state insurance fund to the dependent.

It must also be noted that before policemen or firemen who, by reason of the particular injuries or disabilities suffered, are eligible to participate in the policemen and firemen's pension fund can be employees within the meaning of the Workmen's Compensation Law, they must be paid from the pension fund an amount which is less than they would receive from the state insurance fund.

Therefore, the specific answers to your questions are as follows:

(1a) In view of the provisions of Section 1465-61, General Code, dependents of policemen and firemen of villages are entitled to the compensation provided for by the Workmen's Compensation Law.

The dependents of policemen and firemen of cities, where, because of the particular injury and disability suffered, such policemen and firemen are eligible to participate in the policemen and firemen's pension fund of the city, are not entitled to the benefits of the Workmen's Compensation Law unless such policemen and firemen during their life had been paid from the said pension fund an amount less than that provided by the Workmen's Compensation Law.

(1b) If a dependent is entitled to receive compensation from the state

insurance fund, there is no authority to deduct from the amount provided by the Workmen's Compensation Law any amount paid such dependent out of a municipal policemen or firemen's pension fund.

(1c) In answering this question, we must first refer to Section 1465-68, General Code, wherein provision is made for the payment of funeral and medical bills, and which, in so far as it applies to the matter under consideration, reads as follows:

"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.

And the answer to the question depends upon whether or not the policeman or fireman is to be considered an employee within the meaning of the Workmen's Compensation Law. If he is such an employee, and the city provides for no medical expenses, then he would be entitled to such expenses out of the state insurance fund, and, in case of his death, his dependents would be entitled to funeral expenses out of that fund.

In answer to your questions (2a) and (2b), I wish to advise that there is no authority to deduct anything from the amount provided for by the Workmen's Compensation Law to be paid to dependents; and if there are dependents of employees, compensation should be computed the same as in any other case of dependency.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4713.

APPROVAL, BONDS OF COPLEY TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, October 28, 1932.

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