The State Control Board has given its approval to the transaction, subject to the understanding that a good and sufficient guaranty is furnished which, in the opinion of the Attorney General's Office, will insure the State of the unrestricted use at all times of a railroad siding leading into said property.

The proposed deed is executed in proper legal form, and contains provisions which, in the opinion of the Attorney General, sufficiently protect the right of the State to use said railroad siding.

Enclosed please find all of the papers which were mentioned above as having been received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4526.

WORKMEN'S COMPENSATION—PERSONS RECEIVING POOR RELIEF, WORKING FOR POLITICAL SUBDIVISION — NOT ENTITLED TO COMPENSATION—WHERE SUBDIVISION ALSO PAYS PERSON, HE IS ENTITLED TO COMPENSATION.

SYLLABUS:

1. *When a person, who applies for relief as provided for in Section* 3476 *et seq. of the General Code and in pursuance thereof performs labor as provided for in Section* 3493, *General Code, is injured while performing such labor, he is not an employee within the meaning of the Workmen's Compensation Law of the State of Ohio and is not entitled to the benefits of that act.*

2. *When such person in performing labor under Section* 3493, *General Code, works on a project which is being financed by the gasoline tax moneys and enters into an agreement with the city that his name may be placed upon the payroll and the amount which he would receive as wages, if he were being paid wages which in fact he is not, may be turned over to the city and placed in the general revenue fund, his status is not changed. Such transfer of funds is unauthorized and illegal. Such person is not an employee within the meaning of the Workmen's Compensation Law.*

3. *A person who applies to a private charitable organization for relief and is required by that organization to perform labor for some other person or for some political subdivision, free of charge, before relief is given, is not working under a contract of hire nor engaged in the business of the organization; and if such applicant is injured while performing such work, he is not to be considered an employee within the meaning of the Workmen's Compensation Law and is not entitled to the benefits of that act.*

4. *Where a person applies to a private charitable organization or public officer for relief, and before he can obtain such relief is required to perform services for the public subdivision, and in the performance of such services the officers of the subdivision agree to pay him for the services which he renders at least a part of that which he is to receive, such person is an employee of the political subdivision within the meaning of the Workmen's Compensation Act, and in case he is injured he is entitled to the benefits of that act.*

5. *When an applicant presents himself to the department of charities for relief under the poor laws of the State of Ohio, and such department refers him to*

some public officer who hires him to perform public work for a valuable consideration, which consideration is paid from the funds of the department of charities, such applicant is an employee within the meaning of the Workmen's Compensation Law, and in case he is injured would be entitled to the benefits of that act.

COLUMBUS, OHIO, July 28, 1932.

Industrial Commission of Ohio, Columbus, Ohio.

DEAR SIR:—This will acknowledge receipt of your request for my opinion upon questions relating to so-called charity workers engaged in doing work for the various political subdivisions of the state, which request reads as follows:

> "Your opinion is respectfully requested by the Industrial Commission relative to whether or not a workman working under the circumstances set forth below is an employe within the meaning of the Workmen's Compensation Act of Ohio.
>
> "There are various claims pending before the Commission involving persons working for various political subdivisions of the State in return for relief furnished them under a provision of the various poor relief statutes or municipal ordinances providing for the relief of the poor. These various situations are set forth below."

Your first question is as follows:

> "The claimant applies to the Division or Department of Charities of the municipality for relief and upon being furnished relief is assigned to one of the various city departments employing labor where he is ordered to report for work. This assignment is made under the provision of Section 3476 G. C., et seq. The claimant is not carried on the payroll of the department where he is assigned for work and where he performs work and no reimbursement is made by this department from the fund appropriated for the maintenance of that department to the Department or Division of Charities. The work which is performed by this claimant being merely extra work and extra service rendered that department for which no charge is made against their appropriation which is allocated to them from the general revenue fund of the municipality.
>
> "Little, if any, consideration is given by the Department of Charities as to the amount of work performed when extending relief. The relief usually being given prior to the work being performed and no effort is made to balance the value of the labor performed with the value of relief afforded. Payment for the relief is made from a fund specifically appropriated by council for charity purposes. This appropriation, in some instances, is very exact, being made for various charity purposes such as for food, clothing, heat and light and rent and is a separate and distinct fund from that which is appropriated for the maintenance and the payment of the personnel of the Charity Department."

To ascertain the exact status of the people so engaged in the work of the political subdivision, it is necessary for us to consider Section 3476 et seq. of the General Code, which sections are identified in our code as "The Poor Laws." Section 3493, General Code, reads as follows:

"When public relief, not in a county or city infirmary, is applied for, or afforded by the infirmary officials of any county or the trustees of a township or officers of a municipal corporation, and the applicant or recipient is able to do manual labor, such officers shall require a male applicant or recipient to perform labor to the value of the relief afforded, at any time, upon any free public park, public highway, or other public property or public contract therein, under the direction of the proper authorities having charge or control thereof. If relief has been afforded and such recipient refuses to perform the labor provided, record of the fact shall be made, all relief or support thereafter refused him, and he may be proceeded against as a vagrant."

It is, therefore, seen that when a person needing outside relief applies to the proper officer furnishing relief under said section, and the applicant for such relief is able to do manual labor, it is the duty of such officer to require the applicant, if a male applicant, to perform labor to the value of the relief given at any time.

As construed that section provides that this labor may be required either before or after the relief is given.

The real question before us then is: Are such persons employees within the meaning of the Workmen's Compensation Law of Ohio?

In enacting the Workmen's Compensation Law, the Legislature specifically defined the term "employee" and that definition is found in Section 1465-61, General Code, which insofar as it applies to the question under consideration reads:

"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. 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 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 officers controlling such pension funds.

* * * * * *"

Aside from the provision for firemen and policemen, the section provides that an employee is every person in the service of the political subdivision named

in the statute "under any appointment or contract of hire, express or implied, oral or written."

The workmen's compensation act as well as those laws relating to the relief of the poor are remedial statutes and must be liberally construed. I have no trouble in reaching the conclusion that those working in free parks, upon the streets, or upon other public improvements are in the service of the subdivision. However, a more difficult question presents itself: Are the persons rendering such services under the conditions set forth in your inquiry performing those services "under any appointment or contract of hire, express or implied, oral or written"?

A contract may be said to be "the agreement of two competent parties about a legal and competent subject matter, upon a mutual legal consideration, with a mutuality of obligation," (*State* vs. *Barker,* 4 Kan. 379; 13 C. J. 237.)

I do not believe that the relationship existing under these conditions is such as may be considered a contract or agreement between the parties. Under our relief statutes, whenever a person presents himself to the proper officer and is entitled to relief, and there is money available, it is the duty of the officer to furnish that relief. Under the section in question that relief extends to maintenance of the body, living conditions, and medical relief.

It also becomes the duty of that officer, in the event it is found that the relief is to be granted, to grant the same, and if the applicant is a male and able-bodied to require him to perform some service for the subdivision in return for the relief given. In connection with the question before us you state that little, if any, consideration is given to the amount of work performed when extending relief. That is, the proper officer granting the relief, if the applicant is entitled to the same, shall have him do some work as soon as possible on account of the relief afforded. I do not believe that those circumstances create a contract which could be enforced or for which a money judgment could be obtained, nor is it such a status as would be subject to an order for specific performance in a court of justice.

Section 3493, General Code, provides that if relief has been afforded before the work is required and the recipient thereof refuses to perform the labor, he is to be denied further relief and to be prosecuted as a vagrant. That clearly shows that there is no contract which could be the basis of any litigation on the part of the subdivision. On the other hand, if the individual were to furnish the labor before he obtained the relief, I do not see how he could recover from the subdivision on a quantum meruit basis, or upon any contract basis, because the relationship does not involve a mutuality of agreement. He would probably have a right to force the proper officer to give him relief under the poor laws.

One of the very important and basic pirnciples underlying the compensation law is that the industry and those who have work to do in the State of Ohio who pay into the state insurance fund do so for the purpose of keeping those engaged in such industry, in case they become injured, from becoming public charges and in need of relief under our poor laws. That is, it was enacted for the purpose of preventing injured workmen becoming in need of public relief. Therefore, I do not believe that the Legislature intended that those who were receiving relief under our poor laws, and were injured while performing work as provided by those laws, should be changed to a different status and their maintenance be provided for by employers under the Workmen's Compensation Law, and thus take them from under the public charge and place them in a better position than they were at the time of the injury. This is especially true for the reason that they can continue to obtain relief under those laws, even

including medical treatment for which the subdivision is required to make provision regardless of the cost of the medical attention needed.

In answer to your first question it is, therefore, my opinion that when a person who applies for relief as provided for in Section 3476, et seq. of the General Code and in pursuance thereof performs labor as provided for in Section 3493, General Code, is injured while performing such labor, he is not an employee within the meaning of the Workmen's Compensation Law of the State of Ohio, and is not entitled to the benefits of that act.

Your second question is as follows:

> "The claimant applies for relief to the City Division of Charities and upon relief being furnished is assigned to work on the construction of a street being constructed with funds which are derived from the state gasoline tax and upon being assigned to work agrees to waive payment in cash and signs a waiver agreeing that the amount of his earnings shall revert to the general revenue fund of the municipality.
>
> "The amount of such payroll in this class of cases is certified by the city auditor to the county auditor as payroll of employees as provided under Section 1465-65, General Code."

As I understand this second question the claimant is in exactly the same position as the claimant described in your first question. However, the money used for the particular project upon which he is engaged is paid from the gasoline tax fund, and the subdivision requires him to enter into an agreement by which his name is put on the payroll but the money received from the gasoline tax fund is returned to the general fund. In other words, they do not intend to give him any compensation but are using this as a subterfuge to transfer the funds from the gasoline tax fund to the general fund. This does not at all change the status of the workmen and the procedure adopted is illegal. Such subterfuge should not be countenanced and money cannot be transferred from one fund to another in that manner.

Since the status of the applicant is exactly the same, my answer to your second question must be the same as my answer to your first question.

This brings us to a consideration of your third question, which is as follows:

> "The claimant goes to the Community Fund or similar organization and if regarded as worthy by them is engaged to work on the city streets or other city property and is set to work under the supervision of the Department of Streets or other department of the city having control of the premises where the applicant works. The applicant is paid by the Community Fund or other organization, from funds that are furnished the organization by the city, such funds either raised by bond issue or by taxation. Under these circumstances, is the applicant an employe within the meaning of the Workmen's Compensation Act, if so, is he an employe of the City or the Community Fund or such other organization?"

This situation creates a more troublesome question. As I understand it, the applicant presents himself to a private agency, such as the community fund or other social organization, and asks for relief; if a proper case, the agency sends the applicant to some public department for the purpose of performing some work, for which the applicant is paid by the private agency. Clearly, such applicant is not in the employ of the subdivision "under a contract of hire, express or implied,

oral or written," and no obligation is thereby created whereby any situation would exist giving the claimant a cause of action for failure to perform any sort of contract, since none in fact exists.

We must then consider whether or not such social agency is an employer within the meaning of the Workmen's Compensation Law. An employer, within the meaning of that act, is defined in Section 1465-60, General Code, which insofar as it relates to the question before us reads:

> "The following shall constitute employers subject to the provisions of this act:
>
> 2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written."

As hereinbefore stated, this being a remedial law it must be liberally construed. We would have no trouble in finding that such organization could be classed as a person, firm or private corporatin, according to the facts in each particular case, but that is not sufficient. Such organization must have in its service three or more workmen "in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written," and this raises a more difficult question. If such organization has any business, it is that of extending relief to the needy.

The mere fact that the organization required an applicant to do some particular act before he is given relief may properly be within its discretion, and if that act calls for the performance by the applicant of labor somewhere for someone, I do not believe that the same can be construed to be a contract of hire in connection with its "business". It is only a condition precedent which is required of the applicant before he can be the recipient of the business in which the organization is engaged, if any, that is, the distribution of public relief.

Therefore, in answer to your third question it is my opinion that a person who applies to a private charitable organization for relief and is required by that organization to perform labor for some other person or for some political subdivision, free of charge, before relief is given, is not working under a contract of hire nor engaged in the business of the organization; and if such applicant is injured while performing such work, he is not to be considered an employe within the meaning of the Workmen's Compensation Law and is not entitled to the benefits of that act.

Your fourth proposition is that in some instances, under the conditions presented in your third question, when an applicant performs labor for the city, the city pays him one-half of what he is to receive from funds raised by bond issue or taxation. My understanding of that is that the man is placed upon the payroll for one-half of what he is to receive for performing the work for the city. The other one-half is paid by the private agency. In that event, when the city accepts the man to work for it, it agrees to pay him a certain amount although that amount is not all that he is to receive for the labor which he performs, since he expects to get a part of the remuneration from the private agency. Such individual then has a contract with the municipality whereby it agrees to pay him a certain amount of money for labor which he is to perform. Clearly that would be a contract; there are competent parties and a mutuality of agreement and every element necessary to the making of a contract.

In that event, the applicant would be in the service of the municipality under

a contract of hire, and, therefore an employee within the meaning of the Workmen's Compensation Law; and, if injured, would be entitled to the benefits of that act.

It is, therefore, my answer to that question that where a person applies to a private charitable organization or public officer for relief, and before he can obtain such relief is required to perform services for the public subdivision, and in the performance of such service the officers of the subdivision agree to pay him for the services which he renders at least a part of that which he is to receive, such person is an employee of the political subdivision within the meaning of the Workmen's Compensation Act, and in case he is injured he is entitled to the benefits of that act.

There is another question which you do not ask but which concerns this proposition and has been brought to my attention during the pendency of this question before me. It may be stated as folllows:

> "A person seeking public relief presents himself to the department of charities and that agency instead of affording him the relief asked for refers him to a public officer for work on public works; the public officer employs the party and places him upon the payroll, which payroll, however, is not paid from the general revenues of the subdivision but is turned over to the charitable agency which disburses the amount of this payroll to the individual from the funds which it has for disbursement for public relief."

It is true that this situation is the means by which the department of charities or other public charitable agency disburses the money in their hands for public relief and such a system is not improper. The mere fact that a contract is created because of the claimant's need is immaterial; it clearly creates a condition whereby the applicant agrees to perform services and in return therefor he is to get either money or supplies of some value, which condition clearly creates a contractural obligation which the applicant could enforce in an action at law. Therefore, such applicant would be an employee within the meaning of the Workmen's Compensation Law, and in case he was injured he would be entitled to the benefits of the act.

It is, therefore, my opinion that when an applicant presents himself to the department of charities for relief under the poor laws of the State of Ohio, and such department refers him to some public officer who hires him to perform public work for a valuable consideration, which consideration is paid from the funds of such department of charities, such applicant is an employee within the meaning of the Workmen's Compensation Law, and in case he is injured would be entitled to the benefits of that act.

Respectfully,
GILBERT, BETTMAN,
Attorney General.