

937.

WORKMEN'S COMPENSATION LAW—TOWNSHIP FIRE CHIEF, CAPTAINS AND VOLUNTEER ASSISTANTS ARE EMPLOYES WITHIN ITS PROVISIONS.

SYLLABUS:

A fire chief in charge of township fire apparatus, and the captains under his control in charge of the various units thereof, and the men selected to assist in operating said fire equipment who are paid for their services by the township trustees under regulations adopted by the township trustees in pursuance of Section 3298-54, General Code, are employes within the meaning of the Workmen's Compensation Law, and as such are entitled to the benefits provided for by that act; in case of death resulting from injuries received in the course of their employment with the township, their dependents are also entitled to the benefits provided for in said act.

COLUMBUS, OHIO, September 30, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from your assistant, Mr. Galloway, requesting my opinion upon the following state of facts:

"The fire apparatus for Harrison Township is in general charge of a fire chief who draws \$1,800.00 per year for full time services. The township has four units located in four separate neighborhoods. Each unit is under the control of a captain who regularly draws \$30.00 per month salary. Each captain has under him a selected group who are called volunteers. This group is more or less permanent although no volunteer draws a salary or is under contract of any kind, but when the siren sounds each member of the volunteer group is supposed to respond if available. For each fire attended by a volunteer, the volunteer draws a minimum compensation of \$1.00 per hour.

The question of law is this: In case the fire chief, a captain, or a volunteer is injured in the course of duty will same be covered by the Workmen's Compensation Act?

I may say further that the four captains are named by the fire chief and the volunteers are named by the respective captains. The writer has consulted Sections 1465-62 et seq. but is not quite sure that they apply at the instant case. The board of trustees has instructed the writer to get a final and official ruling on same."

Section 3298-54, General Code, authorizes township trustees to establish all necessary regulations to guard against the concurrence of fires, protect the property and lives of the citizens against damages and accidents resulting from fire, and further provides that when a volunteer fire company has been organized such township trustees may purchase equipment for the use of such company.

Section 3298-55, General Code, among other things, authorizes the township trustees to levy a tax in any year or years sufficient to provide "protection against fire" and also "to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies."

In Opinion No. 583, rendered by me to Hon. E. B. Unverferth, Prosecuting Attorney of Putnam County, under date of July 1, 1929, I held:

"Under the provisions of Section 3298-54, General Code, the trustees of a

township may legally pay to each volunteer fireman the sum of one dollar for attending a fire call."

In that opinion it was stated that the amount paid was nominal, and inasmuch as such small pay would aid, to some extent, in maintaining said volunteer organization, it would come within the powers of the trustees to establish the necessary rules and regulations to protect the township against fire.

I also think that the language of Section 3298-55, General Code, is somewhat pertinent in that it provides that the township trustees in any year or years are authorized to levy "a sufficient tax upon all the taxable property in the township to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies."

This section authorizes a levy of taxes for two different purposes, one for "protection against fire" and another to "provide and maintain fire apparatus, etc." as stated in the section.

While there is no specific authority for spending the money, the fact that the township trustees are authorized to levy a tax for that purpose is sufficient authority to spend the money after the tax is collected.

Therefore, Harrison Township has authority to levy a tax for the purpose of raising sufficient money to pay compensation as set out in the above statement of facts "to provide protection against fire."

We then come to consider the Workmen's Compensation Law and to whom it shall apply. Section 1465-60, General Code, provides in part:

"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."

This discloses that the township is an employer within the meaning of the Workmen's Compensation Law.

The act provides compensation for employes, workmen, etc., the term being defined in Section 1465-61, General Code, which reads in part as follows:

"The terms '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."

It will be noted that every person in the service of a township, under an appointment or contract of hire, is an employe under the protection of the Workmen's Compensation Act.

According to the statement of facts given, the regulations which the township trustees have adopted in pursuance to the provisions of Section 3298-54, General Code, provide for the organization of the companies by creating a chief who shall appoint

captains of the various units, each captain, in turn, selecting a group to assist him in the operation of the various units, the members of each group being called "volunteers". When they are serving under these regulations they are in the service of the township under appointment or contract of hire, inasmuch as they receive a fixed amount or rate for their services.

The fact that the firemen under consideration are called "volunteers" is in no wise controlling. It is the substance of the regulations and provisions made by the township trustees that controls rather than the name by which the organization is known. In fact, these firemen are really part time employees of the township. They give their services to the township when needed in connection with a fire and receive a fixed rate of pay for the services rendered. This amounts to a contract of hire. The fact that the amount of pay which they may receive is very small, in many instances almost nominal, does not affect the consideration of the question. The contract of hire is none the less such a contract even though the pay for the services rendered is small.

The Workmen's Compensation Law is remedial, and it is a well established principle of law that remedial statutes must be liberally construed. That such construction applies to the Workmen's Compensation Act has frequently been decided by the various courts and by this department.

I am therefore of the opinion that the fire chief, the captains, and the men serving under them, as stated in the communication, are in the service of the township under appointment or contract of hire, and as such are eligible to the benefits of the Workmen's Compensation Law.

Respectfully,

GILBERT BETTMAN,

Attorney General.

938.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HUFFMAN-WOLFE COMPANY, COLUMBUS, OHIO, FOR SPECIAL PLUMBING AND HOT WATER SUPPLY SYSTEM IN POWER HOUSE AND TUNNELS, INSTITUTION FOR FEEBLE-MINDED, APPLE CREEK, OHIO, AT AN EXPENDITURE OF \$7,098.00—SURETY BOND EXECUTED BY THE SEABOARD SURETY COMPANY.

COLUMBUS, OHIO, September 30, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and the Huffman-Wolfe Company, of Columbus, Ohio. This contract covers the construction and completion of contract for special plumbing and hot water supply system in power house and tunnels, Institution for Feeble-Minded, Apple Creek, Ohio, and calls for an expenditure of seven thousand and ninety-eight dollars (\$7,098.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 4 of House Bill 203 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Seaboard Surety Company appears as surety, sufficient to cover the amount of the contract.