the number of persons named in the subpoena, and the distance properly traveled in serving the same."

Finally, the expenses of the telephone calls, involved in the fifth item, supra, are clearly not fixed by law or authorized to be fixed by an officer or tribunal and should also be first allowed by the county commissioners.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3511.

WORKMEN'S COMPENSATION LAW—APPLICABLE TO EMPLOYERS AND EMPLOYEES ENGAGED IN CONSTRUCTION OF FEDERAL BUILDING IN THIS STATE—SAFETY LAWS OF OHIO APPLICABLE TILL CONGRESS HAS LEGISLATED ON THE SUBJECT—FEDERAL BUILDINGS IN OHIO "PLACES OF EMPLOYMENT" WITHIN SECTION 871-13, BUT NOT WITHIN SECTION 1002, GENERAL CODE.

SYLLABUS:

1. *The Workmen's Compensation Law of Ohio is applicable to employers and employees engaged in the construction of federal buildings upon lands acquired by the federal government in the State of Ohio, when the work is done by an employer who has entered into a contract with the federal government for that purpose.*
2. *The safety laws of Ohio adopted by the General Assembly, and the safety code adopted by the Industrial Commission of Ohio in pursuance to law, are applicable to such employers and employees in all cases, unless the Congress of the United States has legislated relative thereto.*
3. *Said premises are not "places of employment" within the meaning of Section* 1002, *General Code, but are "places of employment" within the meaning of Section* 871-13, *General Code.*

COLUMBUS, OHIO, August 18, 1931.

HON. T. A. EDMONDSON, *Director, Department of Industrial Relations, Columbus, Ohio.*

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

> "This department and the Industrial Commission have several legal questions confronting them in regard to the jurisdiction and authority which they exercise over employes, employers, and places of employment in connection with the construction of federal buildings or other operations on federal property within the State where such work is done by an independent contractor.
>
> "At times these contractors have their principal place of business in other states and conduct no operations within this state, except those in connection with the work on federal property or such as may be incidental thereto, as for instance the hauling of material to and from the location.
>
> "There are several questions involved in regard to such work which I will enumerate below and respectfully ask your written opinion on the questions of law involved.

"(1) Is it compulsory for an employer of three or more regular workmen who has a contract for the construction of a building or other work on federal property within the State of Ohio to comply with the Workmen's Compensation Law of this state?

"(2) Is such a contractor or his employes entitled to the benefits and protection of the Workmen's Compensation Act if the contractor voluntarily requests and accepts coverage under said Act?

"(3) Is such an employer bound to comply with the specific requirements of the General Code or of the requirements or orders of the Commission enacted for the protection of the lives, health and safety of employes and in connection therewith may the deputies of the Commission enter upon such federal property for the purpose of inspecting or enforcing these requirements?

"(4) Do the provisions of the General Code relating to 'Shops and Factories' as defined in Section 1002 G. C. and 'places of employment' as defined in Section 871-33, paragraph one, G. C. apply to such construction work or premises?"

Your request requires a consideration of the right of the state to enforce its jurisdiction over property owned by the federal government within the boundaries of the State of Ohio.

In Section 9, Article I, of the Constitution of the United States, a provision is found that Congress shall have power

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may be, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; * * *"

This section of the Constitution clearly grants unto Congress exclusive legislative authority over all places purchased by the federal government in the State of Ohio with the consent of the state government, if such places are to be used for the things mentioned in the Constitution.

Of course, I am assuming that the federal buildings mentioned in your communication are such as postoffices and revenue buildings, which may readily be classed as "other needful buildings."

I find that the General Assembly of Ohio has given consent to the federal government to purchase such lands in the state of Ohio and exercise its power thereover.

Section 13770, General Code, reads as follows:

"That the consent of the state of Ohio is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, court houses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government."

Section 13771, General Code, insofar as applicable to a consideration of the question before us, reads as follows:

"That exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands."

This section grants unto the federal government exclusive jurisdiction over lands acquired by the United States government for the purposes mentioned therein, reserving, however, to the state the right to enter upon such lands to serve civil and criminal processes.

These sections of the Constitution, and the statutory law of Ohio, clearly vest in the Congress of the United States full power and authority to legislate relative to lands purchased in Ohio for governmental buildings or other governmental purposes. The fact that this power is vested in Congress does not necessarily mean that the state may not exercise valid police regulations over such territory, if such regulations do not interfere with the power vested in Congress.

It has long been a well recognized rule that in many federal matters, the states have the right to exercise valid police power so long as such power is not arbitrary and not in conflict with federal regulations relative thereto.

The leading case on this point is that of *McKelvey* v. *United States,* 260 U. S. 353; 67 L. Ed. 301. In the opinion of the court in that case, delivered by Mr. Justice Van Devanter, it is stated:

"It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned."

Following this statement, the court also said:

"It is also settled that the states may prescribe police regulations applicable to public-land areas, so long as the regulations are not arbitrary or inconsistent with applicable congressional enactments. Among the regulations to which the state power extends are quarantine rules and measures to prevent breaches of the peace and unseemly clashes between persons privileged to go upon or use such areas."

The fifth headnote of this case reads as follows:

"Congress may prescribe rules respecting the use of public lands of the United States, sanctioning some uses, with a penalty for interference with them, and prohibiting others."

The sixth headnote of the same case provides:

"The states may prescribe police regulations applicable to areas of public lands of the United States so long as they are not arbitrary or inconsistent with applicable congressional enactments."

Another case frequently cited in connection with this question is that of *Omaechevarria* v. *Idaho,* 246 U. S. 343, 62 L. Ed. 763. The third headnote of that case reads:

"The police power of a state extends over the Federal public domain, at least where there is no congressional legislation on the subject."

The opinion of that case, written by Mr. Justice Brandeis, amply sustains the rule contained in the headnote above cited.

From these cases and other cases of a similar nature, we find a general rule laid down in 50 C. J., 888, to be as follows:

> "As owner of the public lands the United States has the same right and dominion over them that any other owner would have, and may protect the same from depredation. Congress is vested by the constitution with the power to control and to make all needful rules and regulations with respect to the public domain, and the exercise of such power cannot be restricted by state legislation. But the states may also prescribe reasonable police regulations applicable to public land areas, in so far as such regulations do not conflict with congressional enactment or if congress has not acted."

With these principles in mind, we come to a consideration of your first question which relates to the application of our Workmen's Compensation Law to employers and employees engaged in constructing a federal building on federal lands in this state.

It is well recognized that workmen's compensation laws are a proper exercise of the legislative power of a state and come within the classification known as the police powers.

Honnold on Workmen's Compensation, Section 12, page 58, reads:

> "The authority for this legislation is that power of the state termed the police power; a power by which the Legislature supervises matters relating to the common weal and enforces the observance by each member of society of duties owed by him to others and to the community at large."

Workmen's compensation laws also supersede the old remedy of damages against an employer. That this is true is shown by the decision of the Supreme Court of Ohio in the case of *State, ex rel.* v. *Creamer,* 85 O. S. 349, wherein at page 389, Judge Johnson, who wrote the opinion, refers to the report made in pursuance of legislative enactment by a committee appointed for that purpose, and adopts some of its statements in his opinion by making use of the following language:

> "The report was prepared after an exhaustive research into industrial conditions in many countries, and an examination of laws, which have been passed in an effort to improve such conditions. Substantially its conclusions are, that the system which has been followed in this country, of dealing with accidents in industrial pursuits, is wholly unsound, that there is an intelligent and widespread public sentiment which calls for its modification and improvement, and that the general welfare requires it. That there has been enormous waste under the present system, and that the action for personal injuries by employe against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from modern industrialism."

The court also said in this same opinion:

> "It is apparent, from a contemplation of the whole enactment and its scope and purpose, as well as of the participation of the state in its administration, that it must find its validity, if at all, in the police power of the state."

Therefore, the Workmen's Compensation Law may be applicable to the employers and employes in question, unless there is something in the law itself, or by way of federal enactment, to prevent its operation in this instance.

The term "employer" is defined in Section 1465-60, General Code, the pertinent part of which section reads:

> "The following shall constitute employers subject to the provisions of this act:
> 1. * * *
> 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."

I am presuming, of course, that the employer in question has more than three workmen in his employ; if so, the definition above quoted is broad enough to include such operations as those under consideration.

The term "employee" is defined in our act in Section 1465-61, General Code, which insofar as applicable to the question before us, reads as follows:

> "The term 'employe', 'workman' and 'operative' as used in this act, shall be construed to mean:
> 1. * * *
> 2. Every person in the service of any person, firm, or private corporation, including any public service corporation, employing 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, including aliens and minors, but not including any person whose employment is but casual and not in the usual course of trade, business, profession or occupation of his employer."

The same comment may be made upon this definition as was made relative to the definition of employer.

The only exception to this is found in Section 1465-98, General Code, which exempts from the operation of the act certain employers and employees engaged in interstate commerce. Since interstate commerce does not enter into the employment under consideration, the provisions of that section need not be considered; and so far as the question before us is concerned, there are no exemptions in the act at all. Neither is there any federal employees' liability act which would govern these workmen.

In the Annual Report of the Attorney General, 1914, Vol. II, page 1189, I find that the Honorable Timothy S. Hogan considered this same question, and held, as disclosed by the syllabus of that opinion, that:

> "An independent contractor employing five or more workmen in Ohio, is, while engaged in the construction of a post office building upon land owned by the federal government in this state, within the purview of the workmen's compensation act."

For the reasons above given and for the reasons contained in the opinion just cited, I am in accord with the conclusion reached by Attorney General Hogan.

That exactly the same question was being considered when that opinion was written as we have before us is shown by the following language found in the opinion:

> "Even if the employer were hiring the workmen for the construction of a government building which occupied all his time and men for a long period of time, this would not alter the situation."

It is, therefore, my opinion that the employer in question is amenable to the compulsory feature of the Workmen's Compensation Law of the State of Ohio.

Such being my conclusion, it is not necessary to give any consideration to your second question.

We come now to your third question, which reads as follows:

> "Is such an employer bound to comply with the specific requirements of the General Code or of the requirements or orders of the Commission enacted for the protection of the lives, health and safety of employes and in connection therewith may the deputies of the Commission enter upon such federal property for the purpose of inspecting or enforcing these requirements."

This question may be divided into two parts. First, is the employer in question bound to comply with the safety laws of Ohio; and, second, may inspectors of the Industrial Commission enter upon these premises for the purpose of enforcing these requirements.

Our safety laws are classed as police measures, and the state in providing for such safety laws, is exercising its police power for the health and safety of employees and the general weal of the public.

You will note that Justice Van Devanter, in the McKelvey case, supra, in speaking of police powers which may be exercised by the state, includes therein "quarantine rules and measures to prevent breachs of the peace and unseemly clashes between persons privileged to go upon or use" public-land areas.

I am convinced that measures intended for the protection of the lives, health and safety of workmen are just as important as the items mentioned in the illustration used by the honorable Justice.

I do not believe that our Supreme Court would attempt to eliminate such legislation from the power vested in the state. Therefore, such safety regulations as have been adopted by the General Assembly, or by the Industrial Commission by virtue of the power vested in it, and which are not in conflict with any federal regulation relative thereto, may be enforced by the State of Ohio.

Our safety laws contain many sections; I am not attempting to advise you specifically on any of them because that would require a volumnious opinion; but, with the general rule above mentioned, you will be able to determine in any particular instance whether or not there is a conflict between federal and state regulations, and if there is such a conflict, the federal legislation must prevail over that of the state.

It clearly follows that since the state has authority to exercise its police power on property owned by the United States government, the officers vested with the enforcement of the law have authority to enter upon premises to enforce the same and to determine whether or not our laws are being violated.

This brings us to a consideration of your next question, which reads:

> "Do the provisions of the General Code relating to 'Shops and Factories' as defined in Section 1002 G. C. and 'places of employment' as defined in Section 871-13, paragraph One, G. C. apply to such construction work or premises?"

Section 1002, General Code, reads as follows:

> "The term 'shops and factories' as used in this chapter shall include the following: manufacturing, mechanical, electrical, mercantile, art, and laundering establishments, printing, telegraph and telephone offices, railroad depots, hotels, memorial buildings, tenement and department houses."

That section clearly does not include any of the operations in question. While you do not specifically state what federal buildings are under construction, it is known that as a general rule the government is not engaged in erecting any of the buildings mentioned in that section, so that the property in question and the construction work thereon do not come within the provisions found in said section.

Section 871-13, General Code, concerning which you inquire, insofar as it relates to the question before us, reads as follows:

> "The following terms as used in this act shall be construed as follows:
>
> (1) The phrase 'place of employment' shall mean and include every place, whether indoors or out, or under ground, and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business, is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business is carried on, and where any person is directly or indirectly, employed by another for direct or indirect gain or profit but shall not include any place where persons are employed in private domestic service or agricultural pursuits which do not involve the use of mechanical power.
>
> 2. * * *"

The operation of constructing a federal building clearly will be construed as a "place of employment" as defined in that section, and it might come under more than one of the classifications contained therein. Therefore, I have no difficulty in reaching the conclusion that the construction of the building on the premises in question would be a place of employment within the meaning of Section 871-13, General Code.

It must be borne in mind that the discussin in this opinion is limited solely to the proposition of a government building being erected upon land purchased by the federal government with the consent of the state legislature, and has no application whatever to any operation carried on by the government itself on said premises.

Summarizing the above discussion, and in specific answer to your inquiry. it is my opinion that:

1. The Workmen's Compensation Law of Ohio is applicable to employers and employees engaged in the construction of federal buildings upon lands acquired by the federal government in the state of Ohio, when the work is done by an employer who has entered into a contract with the federal government for that purpose.

2. The safety laws of Ohio adopted by the General Assembly, and the safety code adopted by the Industrial Commission of Ohio in pursuance to law, are applicable to such employers and employees in all cases, unless the Congress of the United States has legislated relative thereto.

3. Said premises are not "places of employment" within the meaning of Section 1002, General Code, but are "places of employment," within the meaning of Section 871-13, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.