

motor vehicles serves at the pleasure of the secretary of state. He is required to give a bond in such amount and with such security as the secretary of state may approve; the activities of the bureau may be investigated at any time by the secretary of state, and the commissioner shall make a report to the secretary of state at any time upon request. In other words, the commissioner of motor vehicles is entirely subordinate and responsible to the secretary of state and sustains a fiduciary relation to him. He may also be removed at any time by the secretary of state, and this without the necessity of furnishing him with a copy of the order of removal and the reasons for the same and giving him an opportunity to file an explanation; nor has such commissioner the right in the case of removal to appeal to the civil service commission as provided in Section 486-17a of the General Code.

Answering your second question, it is my opinion, therefore, that the position of commissioner of motor vehicles is in the unclassified civil service of the state.

3. Paragraph 8, division (a) of Section 486-8 of the General Code provides for the following exemptions in the unclassified service:

"8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissioners, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer."

The exemptions above referred to are allowed to elective state officers and principal executive officers, boards or commissioners only. The commissioner of motor vehicles is subordinate, by the terms of Section 6290-1 of the General Code, to the secretary of state. He is not, therefore, a principal executive officer and, in answer to your third question, it is my opinion that he is not entitled to the exemptions provided for in paragraph 8, division (a) of Section 486-8, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

122.

REPAIRS TO ROADS AND BRIDGES, ETC.—CASES REQUIRING IMMEDIATE REPAIRS DESIGNATED AS "EMERGENCY REPAIRS" UNDER SECTION 2792-1, GENERAL CODE, ARE NOT "EXTRAORDINARY EMERGENCIES" WITHIN THE MEANING OF SECTION 17-1, GENERAL CODE—COUNTY SURVEYOR IS NOT AUTHORIZED TO PAY WORKMEN IN GOING TO AND RETURNING FROM THE PLACE DESIGNATED FOR THEM TO REPORT.

SYLLABUS:

1. *Cases requiring immediate repairs to roads, bridges and culverts as provided by Section 2792-1, General Code, designated in such section as "emergency repairs," are not cases of "extraordinary emergency" within the meaning of Section 17-1 of the General Code.*

2. *The county surveyor is without authority to pay workmen engaged in the repair and maintenance of roads within such county for the time spent by said work-*

men in going to and returning from the place designated by the proper authority as the place to report for labor.

COLUMBUS, OHIO, March 1, 1927.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date reading as follows:

“Section 17-1, G. C., of Ohio, provides that no employe of the state, or any political subdivision thereof shall be employed for more than eight hours in any one day, or forty-eight hours for the week’s work, except on emergency work. Further, Section 2792-1, providing for an emergency repair fund to be appropriated by the county commissioners and vouchers to issue therefrom by the county surveyor for repairs under the sum of \$200.00, and providing further that all such repairs shall be known and classified as emergency repairs.

In view of these two sections, this office requests an opinion as to whether said Section 17-1, G. C., contemplates such emergencies as classified under Section 2792-1, G. C.

Under Section 2792-1, the commissioners of this county are employing a maintenance crew and causing such emergency work to be done by force accounts, as contemplated in said section. Said labor is being paid from the time of leaving for this work to the time of returning from the work on county conveyance. It is maintained by the county surveyor of this county that such payment is illegal and said labor should only be paid from the time of arrival at job until leaving said job. Probably this contention, if complied with, would make it rather hard to procure labor as many of these jobs are some distance from the county seat and the headquarters of the repair crew.

With this statement of circumstances, is it the opinion of your office that said Section 17-1 is being violated by employing said force account labor for a longer period than eight hours, and secondly, can said county commissioners legally pay for a longer period of time when not actually spent on the job but part of which time is spent in going to and returning from said job?”

1. Section 17-1 of the General Code, to which you refer, provides:

“Except in case of extraordinary emergency, not to exceed eight hours shall constitute a day’s work and not to exceed forty-eight hours a week’s work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract or otherwise; and it shall be unlawful for any person, corporation or association, whose duty it shall be to employ or to direct and control the services of such workmen, to require or permit any of them to labor more than eight hours in any calendar day or more than forty-eight hours in any week, except in cases of extraordinary emergency. This section shall be construed not to include policemen or firemen.”

This section was enacted to make operative Section 37, Article II of the Ohio Constitution of 1922, reading as follows:

“Except in cases of extraordinary emergencies, not to exceed eight

hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract, or otherwise."

Section 2792-1 of the General Code reads as follows:

"For the purposes of this act, necessary repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways, and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at once to make such repair by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the 'county surveyor's emergency repair fund.' All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor."

Section 17-1, supra, (108 v. Pt. II, 1286) became effective July 1, 1915, while Section 2792-1 (110 v. 133) was not enacted until April 28, 1923.

No difficulty should be experienced in determining that the term "emergency repairs" as used in Section 2792-1, supra, does not come within the phrase "extraordinary emergency" as used in Section 37, Article II of the Constitution, and Section 17-1 of the Code, enacted pursuant thereto.

An extraordinary emergency means a sudden, unexpected occurrence or condition calling for immediate action. The Standard Dictionary defines an emergency as follows:

"A sudden or unexpected condition calling for immediate action."

The definition given in Webster's New International Dictionary is:

"An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency."

The same authority defines extraordinary as:

"Beyond or out of the common order or method; not usual, customary, regular, or ordinary; * * *"

It is clear that the legislature had no intention of attempting to bring the cases requiring the kind of repairs described in Section 2792-1, supra, within the term "extraordinary emergency" as used in Section 17-1, supra, because it did not employ the phrase "extraordinary emergency." It was simply using the words "emergency repairs" as a convenient term to designate the class of repairs described in that section, vesting in the county surveyor the discretion to determine what repairs he would so classify.

And it is equally clear that the repairs described by such section are neither

extraordinary nor of a nature where the conditions calling therefor could be said to be an *emergency*. Such repairs are not out of the common order, nor can they be said to be sudden or unexpected or unforeseen.

These conclusions are in line with a former opinion of this department dated September 11, 1916 (Opinions of the Attorney General, 1916, page 1530), the syllabus of which is as follows:

“The facts that road work can be prosecuted only during the summer months, and those living along the route of a road improvement and also the public generally are inconvenienced during construction work do not constitute an emergency within the meaning of the eight hour law, Section 17-1, G. C.”

and with the holding of the court in *State vs. Walters*, 60 Bull., 481, wherein it was held:

“The expression ‘extraordinary emergency’ in this section, means an unexpected situation which arises in an extraordinary and unforeseen manner.”

In writing this opinion, I am not unmindful of the case of *The State of Ohio vs. Peters*, 112 Ohio St., 249, the first syllabus of which is as follows:

“Section 17-1, General Code, has no application to the employment of labor by a municipality in the operation of a public utility owned by such municipality. The expression ‘workmen engaged on any public work carried on or aided by the state, or any political subdivision thereof, whether done by contract or otherwise,’ relates to the construction of public improvements and not to their maintenance or operation.”

An examination of the opinion in that case shows that while the court made a distinction between work being done in the construction and erection of a public utility on the one hand, as opposed to work done “in maintaining or operating a public utility after completion” on the other, the distinction thus made applies only to public utilities operated by a municipality “by a virtue of the private and proprietary powers of the municipality” and not to work done by the state in its governmental capacity. In this connection your attention is invited to Opinion Number 814 of this department, dated September 10, 1915, and found at page 1713 of the Opinions of the Attorney General for that year.

2. This brings me to a consideration of your second question.

It is of course necessary that a man go from his place of residence to his work, and that at the conclusion of such work he return to his home for rest and recreation. But it is a matter of common knowledge that in the private industry of the country men are not paid for the time used in going to and returning from their place of labor, or *the place designated for them to report* to their superior to assume their duties. Even in the enforcement of the so-called “Sixteen Hour Law” relating to railroad trainmen, the time used in going to and from the place designated for them to go on duty is not computed as a part of the sixteen hours of duty but of the eight hours of rest. What the public buys is eight hours of labor and it is entitled to that for which it pays. What constitutes eight hours of labor should be determined by reference to the customs and well known rules of industry, in which as above pointed out, eight hours of labor does not include the time spent going to and returning from the place designated by the proper superior, as the place to report and go on duty. As to what place shall be designated as the place for workmen to report for work is within the discretion of the county surveyor.

Specifically answering your questions, I am of the opinion that:

1. Cases requiring immediate repairs to roads, bridges and culverts as provided by Section 2792-1, General Code, designated in such section as "emergency repairs," are not cases of "extraordinary emergency" within the meaning of Section 17-1 of the General Code.

2. The county surveyor is without authority to pay workmen engaged in the repair and maintenance of roads within such county for the time spent by said workmen in going to and returning from the place designated by the proper authority as the place to report for labor.

Respectfully,
EDWARD C. TURNER.
Attorney General.

123.

APPROVAL, BONDS OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT,
WYANDOT COUNTY, \$5,750.00.

COLUMBUS, OHIO, March 1, 1927.

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

124.

APPROVAL, BONDS OF HICKSVILLE TOWNSHIP, DEFIANCE COUNTY,
\$8,500.00.

COLUMBUS, OHIO, March 1, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

125.

LONGVIEW STATE HOSPITAL—APPROVAL OF PURCHASE BY THE
STATE.

COLUMBUS, OHIO, March 1, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I have your letter of February 15, 1927, with reference to the purchase by the State of Ohio of the property now owned by Hamilton County and occupied and used by the State as the Longview State Hospital for the insane. With your letter you transmit the following documents: