

those provided for in section 454 in chapter 10 of Title 38 relating to the proceeds of War Risk Insurance. As noted by the court in the recent case of *Trotter, Guardian, vs. State of Tennessee*, 290 U. S. 354, section 454, before quoted, speaks of "compensation, insurance, and maintenance and support allowance payable" to the veteran, and provides that these shall be exempt from the claims of creditors and from taxation. However, as noted in the case of *Pagel vs. Pagel, supra*, when the proceeds of a War Risk Insurance policy have been paid to the estate of a deceased World War veteran, the transaction is one past the point where such insurance is payable to the veteran and for this reason, as held by the court in the *Pagel* case, the proceeds of such insurance paid into the hands of the administrator of the deceased World War veteran are subject to the claims of the creditors of the veteran's estate; and by parity of reason the proceeds of such insurance paid into the hands of the administrator of the veteran's estate would, in my opinion, be subject to taxation.

In this connection, it will be noted, section 618 in chapter 11, Title 38, extends the exemptions therein provided for, with respect to Adjusted Service Certificates and the proceeds thereof, not only to the veteran and his dependents but "to his estate". And by reason of this fact and the further consideration that Adjusted Service Certificates and the proceeds thereof are issued and paid primarily for the benefit of the veteran and his dependents, I am of the opinion, in answer to your second question, that the proceeds of such Adjusted Service Certificate paid to the administrator of a deceased World War veteran after his death are exempt from taxation.

What I have said above in answer to your first question constitutes a sufficient answer to your third question so far as War Risk Insurance and the proceeds thereof are concerned. With respect to Adjusted Service Certificates and the proceeds thereof, I am inclined to the view that the same are exempt from taxation until the moneys paid on such certificates, after the distribution thereof, get into the hands of persons other than the dependents of the deceased World War veteran, or until such moneys are invested in some other form of property as in lands or securities. See *Trotter vs. Tennessee, supra*; *State vs. Wright*, 224 Ala. 357; *Martin vs. Guilford County*, 201 N. C. 63.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3632.

WORKMEN'S COMPENSATION LAW—EMPLOYEES OF OHIO RELIEF  
PRODUCTION UNITS, INC., COME WITHIN THE PROVISIONS  
THEREOF.

SYLLABUS:

1. *The Ohio Relief Production Units, Inc., is a private employer within the meaning of the Workmen's Compensation Law of Ohio, and those engaged in its service are employees within the meaning of that law and are entitled to the benefits thereof.*

2. *The Ohio Relief Production Units, Inc., is subject to all the burdens and penalties of the Workmen's Compensation Law of the State of Ohio.*

3. *The Ohio Relief Production Units, Inc., is amenable to the Industrial Commission Law, Sections 871-1 to 871-45, General Code of Ohio.*

COLUMBUS, OHIO, December 15, 1934.

*The Industrial Commission of Ohio, Columbus, Ohio.*

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

“Certain questions have arisen pertaining to the Workmen’s Compensation Law and The Industrial Commission Law out of the relief program of the State Relief Commission of Ohio, for the apparent purpose of providing work for the unemployed and for producing certain necessary manufactured goods for the use of people in need of relief. The Ohio Relief Production Units, Inc., has been incorporated under the law of Ohio as a corporation not for profit. The incorporators of this corporation are members of the State Relief Commission of Ohio.

“We are advised that this corporation now has some nine hundred employes and operates approximately twelve manufacturing plants in various parts of the State, producing clothing, furniture and necessary household furnishings. Approximately one-third of these employes are not relief clients but are workers skilled in the various operations necessary for the production of the required goods. These employes are hired in the open labor market. All these workers are subject to discharge should they not be efficient and satisfactory; they work two shifts of twenty-five to thirty hours per week. The purpose of this corporation as set forth in the Articles of Incorporation is as follows:

‘To co-operate with the Federal Surplus Relief Corporation and the Federal Emergency Relief Administration in furnishing relief to needy persons within the State of Ohio; to purchase materials and commodities; to process materials into commodities by the employment of needy persons on poor relief; to distribute such commodities for poor relief purposes only, for either labor or goods; except only, for the repayment or offsetting of funds loaned or granted by the Federal Surplus Relief Corporation, or other Federal agencies, to said corporation; to acquire, hold, manage and dispose of such real and personal property as shall or may be necessary or convenient for the acquisition, production, processing, storage and distribution of such materials and commodities; and to do all things necessary and proper for carrying into effect the purposes aforesaid.’

The products of the factories are sold to the County Relief Organizations at the market price. The Corporation has no capital nor any bank account, as such. For its expected credits, to be received from county relief budgets in payment for goods delivered, the State Relief Commission grants the corporation, monthly, in advance, from Federal funds made available to the State Relief Commission, an ear-marked credit, sufficient to carry the corporation’s budgeted operations.

We are further advised that the Auditing Department of the State Relief Commission of Ohio acts as the banker of the corporation by the shifting of debits and credits on its books and it has become a matter of doubt whether the expenditures of the corporation are payments of

private funds by a private corporation or are payments of state and Federal funds by a State Commission. We are further advised that these funds are not State Funds in any instance because the budget of the corporation is granted from the Works Division Fund and their wages are paid on Works Division Projects. Though counties may purchase the corporation's products from the proceeds of Section 3 bonds it is claimed the money becomes a part of the resources of a private corporation offsetting in part the advances to the corporation of Federal funds.

Your opinion is respectfully requested on the following questions:

1. Is the Ohio Relief Production Units, Inc., as it is at present organized and financed, an employer within the meaning of the Workmen's Compensation Law of Ohio?
2. Are the workers in the factories operated by the above corporation, employes of the State Corporation within the meaning of the Workmen's Compensation Law of Ohio?
3. Or are such employes public employes?
4. If they are public employes who should report their payroll and pay the premium prescribed by law?
5. Are these factories and other projects operated by said corporation subject to the provisions of the Industrial Commission Law, General Code, Section 871-1 to 871-45?"

An examination of the records in the office of the Secretary of State discloses that the Ohio Relief Production Units, Inc. was incorporated as a corporation not for profit by three citizens of the State of Ohio.

No consideration is being given in this opinion as to whether or not the statutes permit the organization of a corporation not for profit for the purposes set forth in the Articles of Incorporation. This opinion is limited entirely to a consideration of the questions submitted by you.

Your first question is whether or not this corporation is an employer within the meaning of the Workmen's Compensation Law of Ohio.

The term employer as used in the Workmen's Compensation Law is defined in Section 1465-60, General Code, which reads in part as follows:

"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."

There can be no question but that a corporation not for profit, organized under the corporation laws of the State of Ohio, is a private corporation, and the provisions of the statute, *supra*, specifically provide that every private corporation, having in its service three or more workmen or operatives, engaged in its business, or in or about its establishment, under any contract of hire, express or implied, oral or written, is an employer subject to the provisions of the act.

The statement of facts in the prospectus attached to your request indicates that clearly this corporation has in its service more than three workmen or

operatives. This statement of facts also indicates that a great number of those employed are ordinary workmen, employed regardless of their need of financial relief, and are employed from the open market the same as other persons are employed. There can be no doubt but that these persons are in the service of this corporation under a contract of hire, that the corporation is amenable to the provisions of the Workmen's Compensation Law and that these skilled workmen are employees within the meaning of that law.

The term employee is defined in Section 1465-61, General Code, which reads in part as follows:

"The term 'employee', '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.

3. \* \* \*"

As I understand the working plan of this corporation, the balance of the workers are engaged according to their need for relief. However, I find in the prospectus of the corporation statements which are helpful in arriving at the status of these persons. It is stated:

"As imagined in this complete little society, the method of operation will still involve, for some time, the present relief set-up. The social worker will continue to investigate the 'relief needs' and set up the 'budgetary requirements' of the clients. The purpose will be to divide equitably the available relief appropriation which may be expended in cash wages.

It is contemplated, at present, that the workers will be allowed to work out their cash budget, at the 'going' or code rate of wages, and then to continue to work somewhat longer for merchandise credits (probably not scrip, but book-keeping credits—to be discussed in Section V). The surplus commodities and services are to be cataloged, so that the clients can liquidate their merchandise credits by mail order."

This clearly indicates that these workers are to receive money or credits of value, or both, in exchange for their services. The relationship, therefore, clearly constitutes a working agreement under a "contract of hire."

In construing the term "contract of hire" as used in connection with public employes, under the provision of Section 1465-61, supra, the Supreme Court of Ohio in the case of *Industrial Commission vs. McWhorter*, the syllabus of which is found in the Ohio Bar, December 3rd, 1934, held that:

"One who applies to a municipality for relief and is given the opportunity, and required, to work for the support which he is to receive, and who in response to such opportunity and requirement, works in one

of the municipal departments which employs labor, under the direction of a municipal foreman at a regular daily wage, payable alternately in groceries and in cash, is in the service and is an employee of the municipality within the meaning of Section 1465-61 of the General Code; and if he sustains an injury while engaged in such work, is entitled to the benefits of the Workmen's Compensation Law."

If such a construction is placed upon a contract of hire in connection with public employees, it is clearly applicable to the term "contract of hire" when used in connection with private employment.

It is, therefore, my opinion that the Ohio Relief Production Units, Inc. is a private employer within the meaning of the Workmen's Compensation Law of Ohio, and that those engaged in its service are employees within the meaning of that law and are entitled to the benefits thereof.

I am also of the opinion that the Ohio Relief Production Units, Inc. is subject to all the burdens and penalties of the Workmen's Compensation Law of the State of Ohio.

Having thus answered your first and second questions, there is no necessity of further consideration of your third and fourth questions.

Your fifth question, in substance, asks whether or not the factories operated by this corporation are subject to the provisions of the Industrial Commission Law, Sections 871-1 to 871-45 of the General Code.

The Industrial Commission law requires all employers of the state to do certain things and also to comply with all lawful orders of the Industrial Commission, and provides penalties for non-compliance therewith.

Section 871-22, General Code, authorizes the Industrial Commission to fix reasonable standards for safety and make reasonable orders for the adoption of safety devices, etc., and enforce them against employers; it is also authorized to make orders relative to places of employment and in general to supervise the safety of all factories and adopt lawful orders relative to safety devices and equipment therein and enforce such orders against the employers.

The term employer as used therein is defined in Section 871-13, General Code, as follows:

"(3) The term 'employer' shall mean and include every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment or of any employe."

That language is very plain and includes every corporation having control and custody of places of employment and employes.

The term employe is also defined in said Section 871-13 as follows:

"(4) The term 'employe', shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment."

It should be noted that the term "employe" includes persons who may be required or directed by an employer, in consideration of gain or profit, direct or indirect, to work or to be in any place of employment.

From these definitions, it is very clear that the Ohio Relief Production Units, Inc. is amenable to the provisions of the Industrial Commission law and to the orders made by the Industrial Commission pursuant to said law, and, it is, therefore, my opinion that the factories operated by the Ohio Relief Production Units, Inc. are subject to the provisions of the Industrial Commission of Ohio as set forth in the Industrial Commission Law, Sections 871-1 to 871-45, General Code.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

3633.

APPROVAL—PETITION TO PROVIDE TEMPORARY RELIEF FOR THE  
PUBLIC SCHOOL SYSTEM OF OHIO.

COLUMBUS, OHIO, December 17, 1934.

MR. CHARLES H. HUBBELL, *Attorney at Law, Cleveland, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing the following proposed law and a summary of the same:

“To provide temporary relief for the public school system of Ohio by temporary appropriations to continue the operation of free-tuition schools not operating under public boards of education in Ohio.

Be it enacted by the people of the State of Ohio:

SECTION 1. In this act the words ‘free-tuition school’ shall mean any school in the State of Ohio which offers to children of school age in its immediate vicinity education in the subjects commonly included in elementary or high school courses, without charge for tuition; provided such school during October 1934 was in operation on a five-day week schedule; provided such school during October 1934 was not supported by or operated under the board of education of any school district in the State of Ohio; and provided the standardized requirements for certification of teachers for such school are or shall be in file in the department of education of the State of Ohio.

SECTION 2. In order that (a) the public school system may be relieved of the burden which would be caused by the necessity of providing public education for the many thousands of children heretofore or now being educated in free tuition schools, (b) confusion and disturbance to the public school system may be prevented, and (c) the cost of providing public school facilities for such children may be avoided, the director of education of the State of Ohio shall, for each of the calendar years 1935 and 1936, certify to and for each free-tuition school in the State of Ohio, for use solely for the payment of teachers’ compensation and the current expenses of operation and maintenance, an amount determined by allocating (in the manner hereinafter in this section set