

To the same effect is the case of *State, ex rel. vs. Commissioners*, 13 O. D. (N. P.) 97.

In the light of these cases it seems clear that the compensation which had been provided for the justice of the peace about which you inquire could not be considered as a salary within the meaning of Article II, Section 20 of the Constitution of Ohio, and it is therefore my opinion that the council may provide a stated fixed salary for such justice and it would not be changing his salary as prohibited by the Constitution of Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

549.

WORKMEN'S COMPENSATION LAW—CHAUFFEURS, GARDENERS AND
HOUSEHOLD SERVANTS NOT "EMPLOYES" WITHIN MEANING OF
ACT.

SYLLABUS:

Chauffeurs, gardeners and household servants employed solely to render services in connection with the maintenance of a private dwelling are not "employees" within the meaning of the workmen's compensation law of this state.

COLUMBUS, OHIO, May 31, 1927.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

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

"An insurance agent of Cleveland, Ohio, maintains that a former Attorney General of Ohio rendered an opinion setting forth that domestic servants were excluded from the operation of the Workmen's Compensation Law.

My remembrance is that our correspondent has a client owning a country estate, upon which are employed chauffeurs, gardeners and household servants, and he believes such persons do not come within the provisions of the Workmen's Compensation Law, as administered by the state of Ohio.

Will you inform us in this matter at your convenience?"

From a personal interview with you I am informed that you wish to know whether chauffeurs, gardeners and household servants who are employed at the employer's private residence and only perform services in connection therewith are "employees" within the meaning of the workmen's compensation law of this state.

Section 1465-61 of the General Code defines who are "employees" within the meaning of said law, and in so far as it applies to the question before us reads as follows:

"The terms 'employee', 'workman' and 'operative' as used in this act, shall be construed to mean:

* * * * *

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.

* * * * *

This section was construed in a former opinion of this department found in the Annual Reports of the Attorney General for 1914, Volume I, page 521, the head-note of which reads as follows:

“The compulsory feature of the workmen’s compensation law does not apply to employers of household or domestic servants in and about a private residence not a hotel or boarding house.”

This opinion was based upon the last part of the above quoted section, which reads as follows:

“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.”

It was held therein that a man’s home can not be classed as his “trade, business, profession or occupation.”

At the time said opinion was rendered that portion of the section read as follows:

“but not including any person whose employment is but casual *or* not in the usual course of trade, business, profession or occupation of his employer.”

It will be noted that the only change made therein by the legislature was to change the word “or” found in the original act to “and” as contained in the present section. The amendment is found in 107 Ohio Laws, p. 159 (1917).

I am of the opinion that the changing of that word is not sufficient to render inapplicable the reasoning in the former opinion and that the legislature did not intend to change the meaning of the section in that respect. It is my opinion that the amendment was made for the purpose of including casual employes who were not included under the former provisions of the section, even though they were employed in the regular business, etc., of the employer.

I am informed that the Industrial Commission of Ohio, which administers this law, has ever since said amendment followed the former ruling of this department and has always held that employes at a private residence did not come within the provisions of the compensation act.

“Administrative interpretation of a given law, while not conclusive, is if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. This might be said to be particularly true of laws of the nature and character of the one under consideration.” *Industrial Commission v. Brown*, 92 O. S. 309, at 311.

In construing the provisions of this act I do not find that “judicial construction” makes it imperative to disregard the interpretation of this provision by the Industrial Commission, and I am of the opinion that its interpretation is correct.

I also agree with the opinion of my predecessor herein above cited.

It is therefore my opinion that chauffeurs, gardeners and household servants employed solely to render services in connection with the maintenance of a private dwelling are not “employes” within the meaning of the workmen’s compensation law

of this state. (Opinion of the Attorney General reported in the Annual Report of the Attorney General for 1914, Volume I, page 521, approved and followed).

Respectfully,

EDWARD C. TURNER,
Attorney General.

550.

APPROVAL, BONDS OF VILLAGE OF BEXLEY, FRANKLIN COUNTY—
\$81,900.00.

COLUMBUS, OHIO, May 31, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

551.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP, JEFFERSON COUNTY
—\$8,500.00.

COLUMBUS, OHIO, May 31, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

552.

APPROVAL, NOTE OF HINCKLEY TOWNSHIP SCHOOL DISTRICT,
MEDINA COUNTY—\$3,360.00.

COLUMBUS, OHIO, June 1, 1927.

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