

**OPINION NO. 76-035****Syllabus:**

Emergency Board approval of a state employee's out of state travel is not necessary to entitle an employee to receive workmen's compensation benefits if the employee otherwise qualifies.

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**To: Robert F. Howarth, Jr., Pres., Emergency Board, Columbus, Ohio**  
**By: William J. Brown, Attorney General, May 7, 1976**

I have before me your request for my opinion, which reads as follows:

"Is a State employee traveling outside of the State without Emergency Board approval, covered by the benefits of the Workmen's Compensation Act?

"By way of background information, Emergency Board approval of out-of-state travel is considered by Section 127.05 of the Ohio Revised Code. In recent months, the Emergency Board has been receiving ever increasing requests for approval of out-of-state travel even though the employees' expenses are to be paid by other than state monies. Upon inquiry, the Board learned that these requests were being submitted to insure that the subject employees were covered by workmen's compensation benefits in the event the employee was injured while traveling outside the State.

"Therefore, the Emergency Board requests your opinion regarding whether Emergency Board approval

of out-of-state travel is necessary to entitle a State employee to workmen's compensation benefits in the event the employee should be injured while traveling outside the State."

In your request you make reference to R.C. 127.05. This statute generally provides for the reimbursement of expenses incurred by a state employee traveling outside the state. Prior to the enactment of this statute the general rule of law was that where a public officer or employee was, in the proper performance of his duties, required to travel, his expenses incurred in such travel could be lawfully reimbursed.

However, in 1961 the Ohio Supreme Court in State, ex rel. Ferguson v. Maloon, 172 Ohio St. 343, voided the general rule and longstanding administrative practice by finding that there must be a specific statute authorizing the reimbursement for travel expenses before such can be paid from public funds. In this regard the Court stated at page 349:

"The law is plain and settled, and has not been deviated from, that public funds cannot be expended for the travel of a public officer unless such expenditure is specifically authorized by law, and such authority cannot be implied."

As a result of the Maloon, supra, decision the 104th General Assembly enacted R.C. 127.05, to provide authority for reimbursement of expenses where such authority was otherwise lacking. R.C. 127.05 provides as follows:

"No executive, legislative, or judicial officer, board, commission, or employee of the state shall, at state expense, attend any association, conference, convention, or perform official duties outside the state unless authorized by law or by the emergency board. Before such allowance may be made, the head of the department shall make application in writing to the emergency board showing necessity for such attendance and the probable cost to the state. If a majority of the members of the emergency board approve the application, such expense shall be paid from any money appropriated to said department, board, bureau, or commission for traveling expenses."

(Emphasis added.)

Shortly after the enactment of R.C. 127.05, the then Attorney General, Mark McElroy, in Opinion Number 2538, 1961 Opinions of the Attorney General, page 588, had occasion to examine this statute and I agree with his conclusions. The syllabus of that Opinion reads in part as follows:

"1. Pursuant to Section 127.05, Revised Code, no state officer or employee may perform official duties outside the state, at state expense, unless authorized by law or by the emergency board.

"2. Where a state officer or employee is authorized by a specific statute, other than Section 141.15, Revised Code, to be reimbursed for his necessary expenses incurred in the performance of his official duties, he is 'authorized by law' within the purview of Section 127.05, Revised Code, to travel on official duties outside the state at state expense, and does not need the approval of the emergency board to so travel at state expense; however, where there is no such specific statute authorizing the officer or employee to be reimbursed for his necessary expenses, he must obtain the approval of the emergency board to travel on official business outside the state, at state expense.

"3. Whether the official duties of a state officer or employee require that he travel outside the state depends on the statutes pertaining to said duties and the particular facts involved."

R.C. 127.05 was, therefore, enacted to provide authority for reimbursing expenses to state employees where such authority was lacking. In order to determine if a state employee is authorized to perform official duties outside of the state, you must examine the particular statutes pertaining to the employee's duties and the facts involved. This matter can not be determined by R.C. 127.05.

Similarly, whether a state employee injured while traveling outside the state may receive workmen's compensation benefits, is dependent upon the provisions of the Workmen's Compensation Act and the facts involved. The fact that the employee did or did not have Emergency Board approval may be of probative value but is in no way determinative of the employee's right to receive workmen's compensation benefits.

As a general rule, there are three fundamental elements in the determination of the compensability of claims for workmen's compensation benefits. The first is the existence of a contract of hire between an amenable employer and the injured employee. The second is that the employee must sustain an accidental injury in the course of and arising out of his or her employment with the amenable employer. The third is that the injured employee must have sustained some disability as the direct result of the injury.

The statutory source for these elements is found in R.C. 4123.46 and 4123.54. R.C. 4123.46 is the general disbursement statute and provides in part as follows:

"The industrial commission shall disburse the state insurance fund to employees of employers who have paid into said fund the premiums applicable to the classes to which they belong when such employees have been injured in the course of their employment, wherever such injuries have occurred, and provided such injuries have not been purposely self-inflicted, or to

the dependents of such employees in case death has ensued."

(Emphasis added.)

R.C. 4123.54 provides in part as follows:

"Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely self-inflicted, is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94, inclusive, of the Revised Code."

(Emphasis added.)

Injury is defined by R.C. 4123.01 (C) as follows:

"(C) 'Injury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment."

If we apply these three elements of compensability to the situation you describe, there will probably be little doubt that the State is an amenable employer and a contract of hire exists between the injured employee and the State. With respect to the third element, an examination of the medical evidence should reveal whether the employee sustained some disability as a direct result of the injury.

Whether the second element, that the employee sustained accidental injury in the course of and arising out of his or her employment, is met, will depend upon the facts of each individual claim. At this point, I could embark upon a very lengthy discussion of the judicial interpretation of this element of compensability. However, for the purpose of answering your specific question, I believe it is sufficient to state that as a general rule if the employee is injured while doing something for the benefit of his or her employer, rather than for someone else's benefit, then the injury will arise out of and in the course of the employee's employment.

However, I will note that if the state employee is not authorized by or required by the duties of his or her employment, to travel outside the state, and does so, then the employee may well have departed from the scope and course of his or her employment. The fact that such an individual obtained prior Emergency Board approval pursuant to R.C. 127.05 would not cure this defect.

R.C. 127.05 can not enlarge the powers and duties of a state employee's employment. As stated earlier, this statute merely provides a method of reimbursing necessary out of state travel expenses in situations where there are no specific provisions of law providing for such reimbursement.

In specific answer to your question it is my opinion, and you are so advised, that Emergency Board approval of a state employee's out of state travel is not necessary to entitle an employee to receive workmen's compensation benefits if the employee otherwise qualifies.