

Workmen's Compensation Act—Employees of Livestock Sanitary Board Included in.

The employees of the Livestock Sanitary Board, such as the State Veterinarian and the district deputies, are exercising a part of the functions of government, and hence are officers of the State and are not covered by the provisions of the Workmen's Compensation Act.

Whether other persons employed by the Livestock Sanitary Board are entitled to the benefits of the Act depends upon the character of work performed by them.

Jerome G. Locke, Esq.,
Chairman of Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

You have requested this office to advise you whether the employees of the Livestock Sanitary Board should be included under the provisions of the Workmen's Compensation Act.

Section 2840 of the Revised Codes of 1921 provides, in part, as follows:

"Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of compensation plan No. 3 shall be exclusive, compulsory and obligatory upon both employer and employee."

It appears from your letter that the Livestock Sanitary Board employees consist of four persons in the office, inclusive of State Veterinarian, eight district deputies on salary, and about fifty-two resident deputies who are practicing veterinarians in several localities and are periodically employed by the Livestock Sanitary Board for certain specific duties.

The provisions of the Workmen's Compensation Act afford compensation to employees, if within the provisions of the Act, but not to officers. The question of whether a certain person is an officer or an employee cannot be determined by the hazardous or non-hazardous character of his duties, neither can any hard and fast rule be laid down to determine when a person is an officer and when an employee.

An office has been variously defined as follows:

"An employment on behalf of the government in any station or public trust, not merely transient, occasional, or incidental; a public station or employment conferred by the appointment of government; the right and duty conferred on an individual to perform any part of the function of government, and receive such compensation, if any, as the law has fixed to the service." (29 Cyc. 1363.)

The outside force consists of eight district deputies and fifty-two resident deputies who are practicing veterinarians. A deputy unless otherwise provided possesses the powers and may perform the duties attached by law to the office of his principal. (418, Rev. Codes of 1921.) These persons are therefore performing duties pertaining to the office of their principal. They are exercising some portion of the sovereign function of government and are, in my opinion, officers of the State. There is no doubt that the State Veterinarian is an officer of the State.

I am, therefore, of the opinion that they are not covered by the provisions of the Workmen's Compensation Act. Whether or not the other three persons employed in the office are entitled to the benefits of the Act depends upon the character of the work performed by them.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.