No. 67

WORKMENS' COMPENSATION ACT—SCHOOL DISTRICTS, City—PUBLIC CORPORATIONS—EMPLOYER

Held: It is compulsory for City School Districts to comply with Workmen's Compensation Act, Plan No. 3.

April 1, 1941.

Miss Elizabeth Ireland
Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have asked "whether it is compulsory for city school districts to comply with the provisions of the Workmens' Compensation Act for their employees."

In answering your inquiry, we turn first to Section 2840, Revised Codes of Montana, 1935, which is as follows:

> "2840. **Compensation Plan No. 3 Exclusive, etc., When a Public Corporation Is the Employer—Duty of Governing Body of Corporations.** 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. Any sums necessary to be paid under the provisions of this Act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this Act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever any contractor engaged in the performance of contract work for any public corporation is the employer, such public corporation upon final settlement with the contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contract under the provisions of this Act. Whenever any public corporation neglects or refuses to file with the Industrial Accident Board monthly payroll report of its employees, the Board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this Act for the collection of assessments."

It will be noted the above section provides, in no uncertain language, that—where a public corporation is the employer—the terms, conditions and provisions of Compensation Plan No. 3 shall be **exclusive, compulsory,** and **obligatory** upon **both employer** and **employee.**

Our Supreme Court, interpreting the above section, expressed its opinion as follows:

> "But the Legislature did not so express itself; on the contrary, it declared that where a public corporation is the employer, the terms, conditions, and provisions of Compensation Plan No. 3 shall be not only **exclusive,** but **compulsory** and **obligatory** as well . . .
>
> "But Section 3 (e) carves out of the general class all public corporations acting as employers, so that the Act is elective as to private employers, but compulsory as to public corporations." (Emphasis mine.)
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> City of Butte et al. v. Industrial Accident Board, 52 Mont. 75, 156 Pac. 130.

The Supreme Court of Montana had under consideration Section 2847, Revised Codes of Montana, 1935, and it held:

> "This Section, as amended, apparently means what it says, and the purpose of the amendment was to preclude any doubt as to the intention of the Legislature to include in the Act all of the employees engaged in an occupation where a part of them were engaged in hazardous work. Thus it will be seen that, from the inception of the administration of the Compensation Act down to the present day. the practice has been to include under the Act all of the employees engaged in an occupation where a part of them were engaged in hazardous work. We are of the opinion that the question raised by the appellants here has been settled by direct legislative

declaration, as well as by the practice of the Board. The objection raised by appellants here cannot stand in the face of the statute."

Williams v. Bronfield Canty Co., 95 Mont. 364, 26 Pac. (2nd) 980.

The Massachusetts Supreme Court, in discussing this principle, said:

"It is clear from those provisions that the Act is not designed to be accepted in part and rejected in part . . . There is no suggestion or phrase warranting the inference that there can be a divided or partial insurance."

In re Cox, 225 Mass. 220, 114 N. E. 281.

Section 2886, Revised Codes of Montana, 1935, defines a public corporation as follows:

"'Public corporation' means the state, or any county, municipal corporation, **school district,** city, city under commission form of government or special charter, town or village." (Emphasis mine.)

The right of an employee in a non-hazardous employment to recover rests entirely on the facts of the particular case.

Section 2862, Revised Codes of Montana, 1935, defines employer as:

"'Employer' means the state and each county, city and county, **city school district,** . . . who has any person in service, in hazardous employment, under any appointment or contract of hire, express or implied, oral or written . . . " (Emphasis is mine.)

It will be observed a city school district is a public corporation and, as a public corporation, it is an employer, as defined in Section 2862, Revised Codes of Montana, 1935, and as such is amenable to Compensation Plan No. 3 which is exclusive, compulsory and obligatory upon both employer and employee, as it is assumed some of the employees in a city school district are engaged in hazardous occupations.

Sincerely yours,

JOHN W. BONNER
Attorney General