

**Workmen's Compensation Act—Officer, Who Is—Matron
of State Industrial School.**

Where matron of industrial school is performing an act, not in the exercise of a function of government, she should be treated as an employee.

Sept. 26, 1919.

Hon. A. E. Spriggs, Chairman,
Industrial Accident Board,
Helena, Montana.

Dear Sir:

You have submitted to me the case of the matron of the State Industrial School at Miles City, who, in the course of her employment, sustained a compound fracture of the leg. The question, therefore, is whether the matron is an officer and therefore excluded from the benefits of the Workmen's Compensation Act as heretofore construed, or an employee of the state and therefore one who should be included in the assessment payroll and conversely entitled to the benefits of the Act through accidental injury sustained in the course of her employment.

I admit that it is not an easy matter to apply general rules as to who are officers and who are employees in each particular case. There is, in fact, no hard and fast comprehensive rule defining officers.

Some of the definitions are as follows:

(a) Public officer is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an indi-

vidual is invested with some portion of the sovereign functions of government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.

Mechem on Public Offices and Officers.

(b) A public office differs in material particulars from a public employment, for, as was said by Chief Justice Marshall, "although an office is an employment, it does not follow that every employment is an office. A man may certainly be employed under a contract, express or implied, to perform a service without becoming an officer."

"We apprehend that the term 'office,'" said the judge of the Supreme Court of Maine, "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments and sometimes to another; still it is a legal power which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment merely has none of these distinguishing features. * * *"

"The officer is distinguished from the employee," said Judge Cooley, "in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance or non-feasance in office, and usually, though not necessarily, in the tenure of his office, and usually, though not necessarily, in the tenure of his position. In particular cases, other distinctions will appear which are not general."

Section 9791 of the Revised Codes provides for the employment of a competent person (a male) who shall be known as director of the Montana State Industrial School.

It shall be the duty of the director to take charge of the school and he shall also have immediate control of the male department of said school and shall by and with the consent of the board of trustees, employ a matron, who shall have immediate control of the female department of the school, and the director shall also employ such other officers and teachers as may be necessary for the management of the school.

Section 792 provided that the salary of the director shall be \$1500.00 per year and the salary of the matron and other employes of the school shall be fixed by the board. The matron shall be directly accountable to the director for the management of the female department of the school.

The director is required to give a bond and holds his appointment at the pleasure of the board. Neither of these conditions apply to the matron.

While many positions in public service partake of the nature of an office and for some purposes might be held to be such, yet if the duties required are more in the nature of an employment, they should be treated as employes and not officers.

Therefore, if the injury was received while performing some acts in the line of her duties as matron, which acts in their nature were not performed under standing laws while exercising some function of government, then she should be treated as an employee and not an officer of the state.

Respectfully,

S. C. FORD,

Attorney General.