

**Workmen's Compensation Act—Deputy Sheriff—Public Officer.**

A deputy sheriff is a public officer and as such does not come within the provisions of the Workmen's Compensation Act.

December 29, 1919.

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

My dear Mr. Spriggs:

I am in receipt of your communication in the matter of the claim of Lola E. Curtis, widow of Frank C. Curtis, who met his death on the tenth day of October, 1919, in the performance of his duties as under sheriff of Gallatin County; he having been shot and killed upon attempting to make an arrest. You have referred the claim to this office for an opinion as to whether the deceased was an officer or an employee of the county.

While an office is based upon some provision of law, an employment is based upon a contract entered into by the government with the employee. The sheriff is the chief executive and administrative officer of the county, being chosen by popular election. His principal duties are in the aid of criminal courts, and civil courts of record, such as serving processes, summoning juries, executing judgments, holding judicial sales, etc. His duties are prescribed by Section 3010 of the Revised Codes. A deputy sheriff is the deputy of the sheriff; one appointed to act for the sheriff, and not in his own name, person or right. (35 Cyc. 1488.) The ministerial duties of the office of sheriff may be performed by the deputy sheriff or the under sheriff, who performs the duties as the representative of the sheriff although he is recognized as a public officer.

State vs. Buss, 125 Mo. 325, 33 L. R. A. 616.

In that case the court said:

"Deputy sheriffs are appointed by the sheriff, subject to the approval of the circuit court. They are required to take the oath of office, which is to be endorsed upon the appointment, and filed in the office of the clerk of the circuit court. After appointment and qualification, they shall possess all the powers, and may perform any of the duties prescribed by law to be performed by the sheriff. The right, authority and duty are thus created by statute. He is invested with some portions of the sovereign functions of government to be exercised for the benefit of the public, and is, consequently, a public officer within any definition given by the courts or text writers. It can make no difference that the appointment is made by the sheriff, or that it is in the nature of an employment, or that the compensation may be fixed by contract. The power of appointment comes from the State; the authority is derived from the law, and the duties are exercised for the benefit of the public."

Under Section 3011, Revised Codes, the sheriff must, as soon as may be after he enters upon the duties of his office, appoint some person under sheriff, to hold during the pleasure of the sheriff. Such under sheriff has the same powers and duties as a deputy sheriff.

Whether a public employment constitutes the employee a public officer, depends upon the source of the power and character of the duties. Article XIX, Section 1, Constitution of this State, requires members of the legislative assembly and all officers, executive, ministerial or judicial, before they enter upon the duties of their respective offices, to take and subscribe an oath of office. This oath is taken by an under sheriff. Under Section 3012, whenever a vacancy occurs in the office of sheriff, the under sheriff must in all things execute the office of sheriff, until a sheriff is elected or appointed and duly qualified.

I am, therefore, of the opinion that an under sheriff or deputy sheriff is a public officer, and therefore does not come within the provisions of the Compensation Act, and the claim should be denied.

Respectfully,

S. C. FORD,

Attorney General.