

Workmen's Compensation—Public Officers—Hazardous Occupations—Industrial Accident Board.

Whether a public officer performs hazardous duties depends upon the nature of the duties required.

J. G. Locke, Esq.,
Chairman, Industrial Accident Board,
Helena, Montana.

February 8, 1926.

My dear Mr. Locke :

You have submitted to this office a resolution adopted by the industrial accident board.

This resolution covers a number of public officers who have heretofore been included, or whom you consider should be included, under the provisions of the compensation act, as amended, with respect to public officers.

It appears that the only officers included in the resolution of the board who have not heretofore been included are the game warden and prohibition enforcement officers.

Prohibition enforcement officers have all the powers of sheriffs in making arrests, and in addition, as a part of their duties, are required to secure evidence of the violation of the liquor laws. They are, no doubt, engaged in a hazardous occupation and should be included under the compensation act.

The game warden, insofar as his duties are confined to his office, is not performing any hazardous occupation. Occasionally, however, he and his deputies make investigations in the field to ascertain whether

the game laws are being violated. These investigations are made outside of the office and involve occasional arrests, and it is possible that some hazard attends these investigations and arrests.

If your board finds that the performance of these duties is hazardous this officer and his field deputies should be included under the provisions of the act.

You also refer to the employees of the board of entomology. These employees make various tests for different departments, principally the board of health and livestock commission. If the duties required to be performed by these officers and bodies are, in the opinion of the board, hazardous in nature they should be included in the provisions of the act.

In your resolution you have quoted section 2847 R. C. M. 1921. This section has no application to the provisions of section 2863 insofar as the latter section applies to and includes public officers connected with or engaged in hazardous occupations.

Section 2847 relates only to employees and requires that all be included where any are engaged in hazardous occupations.

This office has held that a public officer is not an employee, nor does section 2863, as amended by chapter 121, laws of 1925, make him an employee. He is still an officer but is included only when engaged in hazardous undertakings.

All public officers of public corporations are not included under section 2847 by reason of the fact that one or more are engaged in hazardous occupations.

The other officers enumerated in your resolution apparently have been included within the provisions of the compensation act and if they are engaged in hazardous occupations then it follows that they should be so included.

Very truly yours,

L. A. FOOT,
Attorney General.