

**Opinion No. 620****Workman's Compensation Act—Montana Relief Commission—F. E. R. A.—Agency of the State—Employees.**

HELD: 1. The Montana Relief Commission is an agency of the State of Montana within the meaning of the Workman's Compensation Act and, under the facts submitted, the F. E. R. A. is not an agency of the State of Montana.

2. Persons at work on Federal Relief projects are not "employees" within the meaning of the Workman's Compensation Act for the reason that the primary purpose is relief and the customary relationship of employer and employee does not exist.

3. It appears that authority of the Montana Relief Commission to carry industrial accident insurance on its own employees is implied in the authority to furnish relief under the very general and extensive powers granted to the Montana Relief Commission and the F. E. R. A.

October 5, 1934.

You ask for an opinion upon certain questions relative to Workman's Compensation on relief projects in Montana. Your first question is as follows:

"Is the Montana Relief Commission a department of the State Government, so as to require the said Montana Relief Commission to carry Industrial Accident Insurance on its employees,"

Sections 2838 and 2839, R. C. M., 1921, recognize the general principle that is not necessary for all employers of labor within the State of Montana to come within the terms of the Workman's Compensation Act. Section 2840, R. C. M., 1921, provides: "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 pro-

visions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee." A public corporation is defined as follows: "'Public corporation' means the state, or any county, municipal corporation, school district, city, city under commission form of government or special character, town, or village." (Section 2886, R. C. M., 1921.)

It has been held by the Supreme Court of this state that the National Forest Service is not a public corporation within the meaning of the Workman's Compensation Act. (*Loney v. Industrial Accident Board*, 87 Mont. 191.)

It is provided by Section 3 of Chapter 20 of the Laws of the Extraordinary Session of the Twenty-Third Legislative Assembly as follows: "The Montana Relief Commission is hereby authorized and it shall be the duty of that Commission to administer the fund herein created, and to administer the Emergency Relief as a state institution in such manner as to effectuate the purposes of this Act as herein set forth." From this section it appears that the Montana Relief Commission is an agency of the State of Montana for the purpose of administering relief, at least insofar as the expenditure of funds belonging to the State of Montana.

I do not exactly understand the relationship of the F. E. R. A. to the Montana Relief Commission. It may well be that such agency, in the distribution of funds received from the Federal Government, is not a State agency. If we assume that the F. E. R. A. is an agency of the United States engaged in carrying out a duty or obligation of the Federal Government we encounter the principle that the State may not interfere with the Federal Government in the performance of its duties as authorized by the Constitution of the United States. (*Johnson v. Maryland*, 254 U. S. 51, citing cases.)

In answer to your first question, it is my opinion that the Montana Relief Commission is an agency of the State of Montana and that, so far as I am advised of the facts, the F. E. R. A. is not an agency of the State of Montana. The question of whether or not workmen who are receiving relief are to be considered as "employees" is reserved

and discussed in connection with the answer to your second question.

The second question submitted is as follows:

"Under the rules and regulations of the Montana Relief Commission and Federal Emergency Relief Administration, those persons who are on relief rolls, the same being without means to obtain subsistence for themselves and their dependents, may, if they are physically able, work out relief that is allotted to them. For this work done they receive cash and with this cash buy the necessities for their subsistence. Do you consider these relief clients, or beneficiaries, employees, in fact, of the Montana Relief Commission when they are in such a manner working out their relief?"

A very difficult question is presented. On the one hand the intent of the Workman's Compensation Act, and its spirit, appears to be that workmen shall be provided with compensation insurance when engaged in public work. On the other hand we have the point of view that relief in the way of funds is being furnished to the needy and that work on the part of the applicant, where possible, is required as an incident to the relief furnished. A number of cases upon this point have been decided recently by the Supreme Courts of various states and the conclusion reached in almost every case is that compensation, as required by our compensation plan No. 3, is not generally required. In these cases the principle is adopted that the primary purpose is relief and that the customary relationship of an employer and employee does not exist. Following is a list of the cases illustrating this point:

Basham v. County Court, 171 S. E. 893, (W. Va.); In Re Moore, 187 N. E. 219, 222, (Ind.); McBurney v. Industrial Accident Commission of Calif., 30 Pac. (2d) 414, (Cal.); Rico v. Industrial Accident Commission, 30 Pac. (2d) 584, (Cal.); Jackson v. North Carolina Emergency Relief Administration, 173 S. E. 580, (N. C.); Bell v. City of Raleigh, 173 S. E. 581, (N. C.); Village of West Milwaukee v. Industrial Commission, 255 N. W. 728, (Wisc.); Vaidya v. City of Grand Rapids, 88 A. L. R. 707 (Mich.); Thurston County Chapter, etc. v. Department of Labor, etc., 7 Pac. (2d) 577, (Wn.).

The case which appears to be closest in point to the question submitted is that of State ex rel. State Board of Charities and Public Welfare v. Nevada Industrial Commission, 34 Pac. (2d) 408, decided by the Supreme Court of the State of Nevada on July 6, 1934. In the State of Nevada the code provision (Nevada Compiled Laws, Section 2680, subsection 1A) contains a provision very similar to our code provisions in Sections 2840 and 2886 defining a public corporation and making insurance compulsory in relation to public corporations. The action was an original proceeding in mandamus before the Supreme Court of Nevada to determine whether or not a legal duty rested upon the State and the political subdivisions thereof to provide for the payment of premiums to the State Insurance Fund for the payment of any and all personal injuries by accidents sustained by persons while at work upon the Federal relief projects determined upon by the State Emergency Relief Commission with the approval of the Federal Emergency Relief Administrator. It was held that: "The state, counties, school districts, and the municipal corporations thereof, where federal emergency relief work is carried on, are not employers within the meaning of the term 'employers' as used and defined in the Nevada Industrial Insurance Act, and the persons placed at work upon such projects are not employees within the meaning of the term 'employees' as defined and used in the Nevada Industrial Insurance Act." The opinion further states: "The money paid them is not paid as a contractual remuneration for their work, but is paid for the relief of themselves and their families. Consequently, whatever else should be done for the relief of unemployment, it is manifest that the terms, conditions, and provisions of the Nevada Industrial Insurance Act cannot be converted into something in the nature of an unemployment insurance benefit for the relief of the unemployed of this state."

I cannot state definitely that the same conclusion would be the conclusion reached by the Supreme Court of the State of Montana, but can assure you that the weight of authority accords with the conclusion reached by

the Supreme Court of Nevada as cited above.

The third question submitted is as follows:

“Can the Montana Relief Commission carry its own Industrial Accident Insurance on its own employees?”

Some measure of protection certainly should be given to those who work at relief labor. The same principles which require protection for laborers regularly employed requires the protection of those engaged in relief labor. The funds to be administered are public funds and are to be expended for the purpose of furnishing relief necessities by unemployment. It would certainly seem that from the funds so appropriated funds might be set aside and administered to take care of those injured in such relief labor. Such authority appears to me to be implied in the authority to furnish relief under the very general and extensive powers granted to the Montana Relief Commission and the Federal Emergency Relief Administration.