

corporation within the terms of the Workmen's Compensation Act.

3. When the Montana Relief Commission undertakes to repair a building of a third party under the direction of the Federal government, the Commission is not carrying out a function of the State and Compensation Plan No. 3 is not compulsory; the private insurer is liable.

April 8, 1936.

Mr. J. Burke Clements  
Chairman, Industrial Accident Board  
The Capitol

You request an opinion and submit a statement of facts in connection with a certain injury:

"In December, 1935, the Montana State Relief Commission was disbursing a Federal Earthquake Emergency Fund in the City of Helena; that said Montana State Relief Commission determined to spend part of said emergency fund in installing an elevator in the Montana Children's Home at Helena and called for bids for the installation of same; that the Otis Elevator Company submitted a bid to the Montana State Relief Commission, which was by said commission accepted, and proceeded to install the elevator in the building, pursuant to its bid; that in installing the said elevator the Otis Elevator Company employed one Homer Weidenbach who, while drilling a hole in the concrete, was struck in the right eye, which resulted in the loss of vision to said eye. It is agreed that this man sustained this injury while in the course of his employment and that it is a compensation case.

"The Otis Elevator Company, for operations in Montana, carries a compensation policy with the Employers' Group, which policy covers all operations where it is not compulsory to insure in the State Fund of Montana, \* \* \*."

Section 2840, Revised Codes of Montana, 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 provisions of compensation plan No. 3 shall be exclusive, compulsory,

**Opinion No. 280.**

**Workmen's Compensation—Montana Children's Home—Montana Relief Commission—Public Corporations—Agency of the State.**

HELD: 1. The Montana Children's Home is a private, charitable or non-profit corporation, created under the laws of Montana.

2. Although the Montana Relief Commission is an agency of the state and performs important functions on behalf of the state, it is not a public

and obligatory, upon both employer and employee. \* \* \* "

The question involved is whether or not the employment of this laborer was an employment which, under the laws of this State, must be insured under Compensation Plan No. 3, or whether this is a case where the employer may insure its employees with an insurance company. It further appears that the Montana Children's Home was, and is, a private, charitable or non-profit corporation, created under the laws of the State.

The improvement was not made on State property or on property under the control of the state. When completed it would not belong to the State of Montana, or any agency of the State of Montana, as would be the case if the improvement were made in connection with roads or public buildings. Reference is directed to Opinion No. 620, Volume 15, Report and Official Opinions of the Attorney General, page 426. The difficulty in interpreting Section 2840, Revised Codes, defining when Compensation Plan No. 3 is exclusive, and Section 2886, Revised Codes, defining a public corporation, is due to the fact that both of these statutes were enacted long before the work of the character described in this inquiry and financed by the government of the United States, was contemplated.

The arrangement must be looked upon from three aspects: (1) that there is in the employment of this character a benefit to the State in the care of its indigent poor, (2) a benefit to a corporation in no way controlled by the State, and (3) the funds are advanced by the Federal government, and the conditions of such expenditure are fixed by the Federal government.

The definition of a public corporation which must insure in accordance with Compensation Plan No. 3 is 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." R. C. M., Section 2886.

It may well be said that when the State through a State agency, constructs or improves a building or improvement for the benefit of the State

that the agency so constructing same may be considered to be the State and within the definition of a public corporation.

When an agency, created and maintained by the State, as the Montana Relief Commission, is engaged in carrying out the plans and directions of the United States government, and in the improvement of property not owned or controlled by the State of Montana, a distinction may readily be drawn. The major benefit that the State receives is the employment of its unemployed. The rules and regulations in relation to the dispensation of this money are fixed by agencies of the Federal government. When in the performance of its duties the Montana Relief Commission is engaged in carrying out the rules of the Federal government, it appears that the Federal government, rather than the State, is really doing this work.

A department of the Federal government as the Forest Service is not a public corporation under the above statute. *Loney v. Industrial Accident Board*, 87 Mont. 191.

The State Orphans' Home is not a public corporation. In *re Beck's Estate*, 44 Mont. 561, 573.

It has been held that a state board of health is not a corporation. *People v. Dunn*, 255 Ill. 289, 99 N. E. 577.

Under the statute the State of Montana is a public corporation. The Montana Relief Commission is not embraced in any of the other classes which describe public corporations in the governing statute. It is a state agency of extensive powers and its members are "civil officers." *State ex rel. Nagle v. Kelsey*, 102 Mont.—, 55 Pac. (2d) 685.

Although this commission is an agency of the State and performs important functions on behalf of the State, it does not thereby become a public corporation under the governing statute.

The State is the public corporation and the commission is its agent. This agent performs certain duties for the State. In other cases it performs duties imposed upon it by the Federal government. When it acts solely for the State in the performance of a function of the State then its prin-

cipal, the State, a public corporation, may be said to act.

Does the State of Montana contract to carry out, in its sovereign capacity all of the instructions of the Federal government in connection with its various plans for relief and rehabilitation?

It may do so when improvements are made in the repair or construction of public buildings, highways and bridges.

When the Commission undertakes to repair a building of a third party under the direction of the Federal government, the Commission is not carrying out the functions of the State government. It is acting for the National government. It cannot be said that the State of Montana (which is the public corporation) is doing the work. Therefore, the work is not being done by a public corporation, nor a contractor for a public corporation.

It is, therefore, held that Compensation Plan No. 3 is not exclusively required in this case and that the insurer is liable.