

Opinion No. 19

**Workmens Compensation—State
Agencies—Employees of State Agencies
and Public Officers.**

Held: (1) The various agencies and governmental departments are compelled to be bound by Plan Three of the Workmen's Compensation Act, and (2) the employees of public officers of the State of Montana are covered the Workman's Compensation Act.

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May 24th, 1951.

Mr. Baxter Larson, Chairman
Industrial Accident Board
Sam W. Mitchell Building
Helena, Montana

Dear Mr. Larson:

You have requested my opinion on a legal question that has arisen out of the following factual situation.

One A was killed in the course of his employment. A was an employee of the Montana Aeronautics Commission, an Agency of the State of Montana. The Aeronautics Commission had not elected to be bound by Plan Three of the Workmen's Compensation Act, and had paid no premiums into the State fund.

There are two legal questions involved:

(a) Are the various agencies and departments of the State of Montana compelled to be bound by Plan Three of the Workmen's Compensation Act?

(b) Are all employees of the State of Montana covered by the Workmen's Compensation Act?

The answer to the first question depends upon the construction placed upon Section 92-206, Revised Codes of Montana, 1947. This section provides in part as follows:

"Where a public corporation is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee.****"

In 1916, shortly after the Compensation Act was passed, the Montana Supreme Court had occasion to construe Section 92-206, supra. *City of Butte v. Industrial Accident Board*, 52 Mont. 75, 77, 156 Pac. 130, was a case in which an employee of the City of Butte was injured, but the City had not elected to be bound by the Act and had made no payments into the compensation fund. It was contended that the City could elect to be bound or not by Plan Three, and that all Section 92-206, supra, meant was that if the City did elect to be bound by the Compensation Act that it would have to be bound by Plan Three. However, the Court said that if such were the intention of the legislature that it could have stated its intention in much clearer language, and that since the legislature had used the words "exclusive, compulsory and obligatory" that the legislature must have intended that public corporations

would have no right of election but would be bound by Plan Three of the Act.

Section 92-434, Revised Codes of Montana, 1947, defines a public corporation to mean the state, county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village. Hence, the provisions of Section 92-206, supra, and the holding of the *City of Butte* case would be applicable to an agency of the State of Montana.

Prior to 1945 it was necessary to show that an employee of a public corporation was engaged in one of the hazardous activities enumerated in Sections 92-302 to 92-306, before any compensation could be paid for injuries received in the course of employment. *Moore v. Industrial Accident Fund*, 80 Mont. 136, 259 Pac. 825, denied compensation to the widow of a county commissioner for the reason that the work of the county commissioner did not fall within the class of hazardous activities set forth in the statutes. *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, 151 Pac. (2d) 1016 also held that a policeman was not engaged in hazardous activity within the meaning of the Workman's Compensation Act.

However, in 1945, the Legislature amended the sections of the Code and broadened the meaning of hazardous occupations to include occupations theretofore not included within the coverage of the Act. Section 2851, Revised Codes of Montana, 1935, was amended by Chapter 88, Session Laws of 1945, and is now Section 92-305, Revised Codes of Montana, 1947. The 1945 amendment added to the existing list of miscellaneous work the following occupations, "city and town firemen, highway patrolmen, police officers and all peace officers; also all public officers and their deputies assistants and employees." (Emphasis supplied)

The answer to the second legal question herein involved depends on whether the employee may be considered an employee of a public officer. If so, his employment is made hazardous by Section 92-305, supra, and he is entitled to the benefits of the Act because of Section 92-206, supra. It is clear that the members of the Montana Aeronautics Commission are public officers as they fit the test laid down in the

leading Montana case of State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 Pac. 411, 53 A. L. R. 583. The Aeronautics Commission was created by legislative act, namely, Chapter 152, Session Laws of 1945. The Commission possesses a portion of the sovereign power of government which is to be exercised for the benefit of the public. Section 1-204, Revised Codes of Montana, 1947. The membership of the Commission has permanency and continuity and is not temporary or occasional. Section 1-201, Revised Codes of Montana, 1947. Hence, it is my opinion that the Montana Aeronautics Commission is composed of public officers and that its employees are covered by the workmen's Compensation Act.

The fact that the Aeronautics Commission has not paid any premiums into the Industrial Accident Fund is not material. Section 92-206, supra., makes it compulsory for public corporations to come under Plan Three of the Act and that section also provides that the Industrial Accident Board may levy an arbitrary assessment upon a public corporation if it neglects to file with the board a monthly payroll report of its employees. The Legislature has made it compulsory for state agencies to insure their employees under Plan Three of the Act and hence the budget of the state agency should include necessary appropriations to pay the premiums for compensation coverage.

Therefore, it is my opinion that (a) The various agencies and governmental departments are compelled to be bound by Plan Three of the Workmen's Compensation Act, and (b) The employees of public officers of the State of Montana are covered by the Workman's Compensation Act.

Very truly yours,
ARNOLD H. OLSEN
Attorney General