

VOLUME NO. 38

OPINION NO. 27

WORKERS' COMPENSATION JUDGE - Employees;  
STATE CLASSIFICATION AND PAY PLAN - Exemption for office of  
workers' compensation judge;  
STATE EMPLOYEES - Classification and pay plan;  
STATE EMPLOYEES - Judicial exemption;  
MONTANA CODE ANNOTATED - Sections 2-18-103(3), 2-15-1014,  
39-71-2901, et seq.

HELD: The employees of the Office of Workers' Compensation Judge are exempt from the State Classification and Pay Plan.

10 July 1979

David M. Lewis, Director  
Department of Administration  
S. W. Mitchell Building  
Helena, Montana 59601

Dear Mr. Lewis:

You have requested my opinion on the following question:

Are the employees of the Office of the Workers' Compensation Judge exempt from the State Classification Plan, Title 2, chapter 18, MCA?

The answer depends upon whether or not the Office of Workers' Compensation Judge is a part of the judicial branch or the executive branch of State government, the former being exempt, and the latter being subject to the State classification plan. Title 2, Ch. 18, MCA.

Title 2, chapter 18, parts 1 and 2, MCA, require all State positions to be classified and establishes the procedures and guidelines for implementing the plan. The judicial branch is exempted by section 2-18-103(3) which provides:

Parts 1 and 2 do not apply to the following positions in state government....  
(3) judges and employees of the judicial branch.

Article V, section 1 of the Montana Constitution empowers the Legislature to establish new courts:

The judicial power is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

The Office of the Workers' Compensation Judge was created by the Legislature in 1975 (1975 Mont. Laws, ch. 537) and was assigned to the Department of Administration for administrative purposes only, § 2-15-1014, MCA. While the Legislature did not expressly provide that the Office was part of the judicial branch there are a number of factors supporting that conclusion.

The powers and procedures in the Office of Workers' Compensation Judge are similar to other state courts. The judge's salary is identical to the salary of a district judge. § 2-15-1014(4), MCA. The qualifications for office are the same as a district judge. § 2-15-1014(3)(a), MCA. The Workers' Compensation judge is selected by the judicial nomination commission in the same manner as district judges. § 2-15-1014(2), MCA. The provisions for expenses and other benefits are the same as those for district judges. Cf. §§ 39-71-2902 and 3-5-213, MCA. Significantly, judicial review

of decisions of the Office of Workers' Compensation Judge must be brought directly to the Supreme Court, paralleling the procedure for an appeal from district court, § 39-71-2904, MCA. Appeals from administrative agency decisions must be filed at the district court level. See § 2-4-702, MCA. Generally, the department which is assigned an agency for administrative purposes only must provide the agency with staff, § 2-15-121(2)(d), MCA. However the Office of Workers' Compensation Judge has authority to hire all employees necessary to carry out its duties, § 39-71-2902, MCA.

The statutory provisions regarding the Workers' Compensation Judge are codified in Title 39, chapter 71, part 29, MCA, and make clear that the Office of Worker's Compensation Judge is a judicial function. Under the provisions of section 39-71-2905, MCA, the court is assigned the duty of making a final determination of any dispute raised by petition of a claimant, employer, or an insurer. The court may deny or determine the amount of any benefits to be received by a claimant. The court has authority to make findings as to whether an award has been unreasonably delayed or refused, and to alter or amend that award, § 39-71-2907, MCA. All compromise settlements are subject to the Court's approval, § 39-71-2908, MCA.

In addition, the statutes consistently refer to the agency as the Office of Workers' Compensation Judge and the hearing officer as a judge. The term "judge" has been defined as "an officer so named in his commission, who presides in some court; a public officer appointed to preside and administer the law in a court of justice...." Todd v. United States, 15 S. Ct. 889, 158 U.S. 278 (1895). In construing statutes words must be defined in the light of their ordinary and common usage. State ex rel. Hoffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). Judges are ordinarily members of the judiciary.

The only viable alternative to finding the Office of Workers' Compensation Judge as part of the judiciary is to declare it to be an administrative agency which possesses quasi-judicial powers. However, as pointed out above, there are numerous factors which distinguish the position from other administrative agencies and indicates the Legislature intended to grant more than quasi-judicial authority.

A helpful tool in determining legislative intent is the history of the times and circumstances which necessitated

passage of a statute, especially when particular provisions are ambiguous. State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P.2d 585 (1938). A thorough review of the legislative history and committee minutes indicates a concern over the impartiality and integrity of the hearings conducted by the worker's compensation division. The committee minutes show an intent on the part of the Legislature to create a truly independent and impartial office for the purpose of adjudicating workers' compensation disputes. Those purposes are best served by holding that the Office is part of the judicial branch of government. A statute cannot be interpreted to defeat its evident purpose since the objects sought to be achieved by the legislation are of prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

It is my opinion the Legislature intended to create a new court of special limited jurisdiction in enacting the Office of Workers' Compensation Judge, and the court and all of its employees are members of the judicial branch of government. Judicial review of his decisions is in the Supreme Court. The qualifications, salary and method of providing expenses are identical to those of a district judge. While most executive agencies assigned to a department for administrative purposes only must employ staff provided by the department, the Workers' Compensation Judge has authority to hire his own personnel. The office performs a judicial function and the Legislature's desire to create an independent agency is best served if the agency is part of the judicial branch.

THEREFORE, IT IS MY OPINION:

The employees of the Office of Workers' Compensation Judge are employees of the judicial branch and thereby exempt from the State Classification and Pay Plan.

Very truly yours,

MIKE GREELY  
Attorney General