

OFFICIAL OPINION NO. 42

September 12, 1956

John W. McConnell
Col., Arty, Ind NG
Asst. Adjutant General
212 State House
Indianapolis 4, Indiana

Dear Col. McConnell:

This is in answer to your letter of August 10, 1956, reading as follows:

"It is requested that an official opinion be rendered to this office as to the status of employees of the Indianapolis Naval Armory, who are paid from the local Armory Board Funds. The employees perform necessary maintenance work in accordance with a lease agreement in which a portion of the armory is used, by and for, the United States Naval Reserve. The funds which constitute a greater portion of the local Armory Board Fund of the Indianapolis Naval Armory, from which the employees are paid, is derived from the incoming rentals from the lease listed above.

"The question is whether or not the employees involved are considered State Employees, from the proposition of inclusion in the State Retirement Program and Social Security?"

A State Armory Board is created by the Acts of 1953, Ch. 187, Sec. 208, as found in Burns' Indiana Statutes (1952 Repl., 1955 Supp.), Section 45-1908.

The Acts of 1953, Ch. 187, Sec. 211, as set out in Burns' Indiana Statutes (1952 Repl., 1955 Supp.), Section 45-1911, empowers and directs the State Armory Board to erect and provide for armories for the use of military and naval forces of Indiana.

The Acts of 1953, Ch. 187, Sec. 213, as found in Burns' Indiana Statutes (1952 Repl., 1955 Supp.), Section 45-1913, reads as follows:

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“The state armory board hereby appointed shall also constitute a board for the general management, care and custody, of said armories when established, and shall have the power to adopt and prescribe rules and regulations for their management and government, and formulate such rules for the guidance of the organization occupying them as may be necessary and desirable.”

Section 45-1915 of the same statute reads as follows :

“All expenses incurred in the operation of state armories shall be paid out of the rentals, income, earnings and any and all other receipts of whatsoever character and such sums are hereby appropriated, or out of any other appropriation provided by law for the purpose of paying the expenses incurred in the operation of the several armories.”

[Acts of 1953, Ch. 187, Sec. 215.]

Section 45-1929 of Burns' Indiana Statutes provides as follows :

“All rental, income, earnings and any and all other receipts of whatsoever character accruing by virtue of the operation of the several armories of the state shall be retained by such local armory board to which such funds accrue. A full and complete record of funds received and disbursed by such local armory boards shall be kept and shall be subject to audit, and reports submitted to the adjutant-general as of July 1 of each year, and at such other times as may be required by the adjutant-general. Each local armory board, subject to approval of the state armory board is authorized to expend revenue received for the improvement, including street improvement, alterations, repair and maintenance of the armory and facilities under its control and may further expend such funds for the benefit of state military organizations assigned thereat. If such funds are not needed for the operation, repair, and maintenance of the armory or if no military organization is assigned to the armory, the state armory board may order such funds turned over to the state

armory board and such funds so transferred may be for the benefit of other armories of the state or of the national guard of the state or expended as a whole.”

[Acts of 1953, Ch. 187, Sec. 229.]

From the statutes above quoted, it is apparent that the employees mentioned in your letter are doing work in the maintenance of state owned property, are under the supervision of a state agency and are paid from state revenues and funds.

All necessary elements exist to constitute an employer-employee relationship with the State of Indiana.

The Acts of 1955, Ch. 341, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1604, being an amendment to Section 4 of the Public Employes' Retirement Act, defines "employee" in part, as follows:

“ ‘Employee’ shall mean any person in the employ of the state whose compensation is paid out of funds of the state * * *.”

Among the exceptions to the definition are: “(c) employees occupying positions normally requiring performance of duty of less than eight hundred [800] hours during a year * * *.”

Your letter does not mention the time involved in employment of the persons in question, therefore this exception is noted.

The Acts of 1955, Ch. 341, Sec. 2, amending Section 5 of the Public Employes' Retirement Act, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-1605, provides that any person who is an employee of the State of Indiana shall become a member of the Public Employes' Retirement Fund.

The Acts of 1955, Ch. 340 amended the Acts of 1951, Ch. 313 to bring state employees under the Federal Social Security Act. Section 1 of said Act, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.); Section 60-1902 (b) states that:

“(b) The term ‘employment’ means any service performed by an employee in the employ of the state * * *.”

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I am, therefore, of the opinion that the persons referred to in your letter are employees of the State of Indiana and are subject to the statutes regarding the Public Employees' Retirement Fund and participation of state employees in the Federal Social Security Act.

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September 13, 1956

Mr. Edgar K. Gusler
State Service Officer
Veterans' State Service Dept.
431 North Meridian Street
Indianapolis, Indiana

Dear Mr. Gusler:

This is in reply to your recent letter requesting my Official Opinion on the following questions:

- (1) Does Chapter 338 of the Acts of 1955 *only* pertain to restoration to civil rights of a committed person?
- (2) If the same Court which committed a patient to a hospital also has probate jurisdiction and appointed a guardian, is it necessary that a separate petition be filed to terminate the guardianship?

I understand that the cases which give rise to these questions are cases involving veterans' benefits in connection with the Veterans' Administration.

The Acts of 1955, Ch. 338, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Sections 22-4240 to 22-4244 provide for the discharge of patients other than criminal sexual psychopaths from psychiatric hospitals.

Burns' Section 22-4242, *supra*, contains the following provisions:

"Whenever any patient is discharged by the superintendent or an administrator for the reason that the patient is no longer a mentally ill person, it shall be the duty of such superintendent or administrator to send a verified certificate of the discharge to the clerk of the