

OFFICIAL OPINION NO. 44

September 19, 1956

Mr. R. R. Wickersham  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis 4, Indiana

Dear Mr. Wickersham:

We have received your letter of August 8, 1956, in which you ask the following questions with regard to the Acts of 1955, Ch. 337, Sec. 1, as found in Burns' Indiana Statutes (1952 Repl., 1955 Supp.), Section 40-1701:

"It has been proposed by one of the companies writing workmen's compensation insurance that the payroll of all such executive officers covered by the policy be subject to a maximum annual payroll of \$5,200.00 and to a minimum annual payroll of \$1,560.00, citing for such authority page R-14A of the Workmen's Compensation and Employees' Liability Insurance Manual. This page is quoted below for your information.

"EXECUTIVE OFFICERS. Executive Officers of a corporation are defined as the President, and any Vice President, Secretary or Treasurer. The intent of this rule is to include all officers of a corporation elected or appointed in accordance with its charter and by-laws:

"The payroll of all Executive Officers covered by the policy shall be included in the statement of payroll and premium charged thereon, subject to a maximum individual payroll of \$100 per week and to a minimum individual payroll of \$30 per week. The entire payroll so developed of each Executive Officer shall be assigned without division to the classification which is applicable to the actual operations in which such Executive Officer is primarily engaged, provided, however, that the entire payroll so developed of each Executive Officer who performs such duties as are ordinarily undertaken by a superintendent,

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foreman or workman, or whose duties include direct charge of the actual performance of any operations of the risk, shall be assigned without division to the highest rated classification which is applicable to any such duties undertaken by such Executive Officer for any part of his time.'

"This office has been advised by the Workmen's Compensation and Occupational Diseases Rating Bureau of Indiana that there is no basis for affording a different treatment to executive officers of municipalities and other political subdivisions, and that the foregoing 'Executive Officers' rule will apply as to such premiums.

"As you know, many public officials in Indiana, especially the members of various boards and commissions, receive only a nominal compensation for their services. Considering this fact and the foregoing ruling, we shall appreciate your official opinion on the following questions:

"1. Would Official Opinion No. 6, issued by your office under date April 12, 1955, equally apply to the premiums of executive officers of municipalities and other political subdivisions, making the individual payroll of such officers subject to a minimum of \$30.00 per week?

"2. What public officials would be included within the definition of 'Executive Officers'? Would this include judicial officers and members of boards and commissions, such as the county council, board of county commissioners, county welfare board, common councils of cities, town boards, school boards, etc.?"

In answer to your first question, we quote from the 1955 O. A. G., page 21, No. 6, at page 22:

"The Acts of 1935, Ch. 323, Sec. 3, as found in Burns' Indiana Statutes (1952 Repl.), Section 39-3008 establishes a Workmen's Compensation Rating Bureau of Indiana. Said bureau is charged in Sec. 10 of said Ch. 323 with the classification for compensation insurance

of all risks. The bureau is further charged by Sec. 4 of said Ch. 323 with the establishment of minimum premiums to be charged for workmen's compensation. The Department of Insurance has the authority to approve a maximum premium rate by virtue of Sec. 13 of said Ch. 323."

It was there concluded that the workman's compensation insurance premium was to be computed on actual wages paid subject to the rules promulgated by the Workmen's Compensation Rating Bureau of Indiana. I know of no reason why this conclusion should not also apply to the workman's compensation insurance premiums for executive officers of political subdivisions.

Therefore, in answer to your first question, it is my opinion that the workman's compensation insurance premiums on an executive officer are to be based on the actual average weekly wages paid subject to a minimum of \$30.00 per week in accordance with the ruling of the Workmen's Compensation Rating Bureau of Indiana.

Your second question poses the problem as to the persons to be included in the class of "Executive Officers," as used in the third sentence of Burns' 40-1701, *supra*. That Section reads, in part, as follows:

"In this act [ §§ 40-1201—40-1414, 40-1503—40-1704 ], unless the context otherwise requires:

"(a) 'Employer' shall include the state and any political division, any municipal corporation within the state, any individual, firm, association or corporation or the receiver or trustee of the same, or the legal representatives of a deceased person, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

"(b) The term 'employee,' as used in this act, shall be construed to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the

employer. An executive officer elected or appointed and empowered in accordance with the charter and by-laws of a corporation, other than a municipal corporation or governmental subdivision of a charitable, religious, educational or other nonprofit corporation, shall be an employee of such corporation under this act. *An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational or other nonprofit corporation, may notwithstanding any other provision of this act, be brought within the coverage of its insurance contract by any such corporation [corporation] by specifically including such executive officer in such contract of insurance and the election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation under this act. \* \* \** (Our emphasis)

No definition of this phrase exists in the Workmen's Compensation Law of Indiana. The Indiana cases dealing with an officer of a corporation injured in the course of his employment do not specifically define the classification of "Executive Officers." The question thus resolves itself into one of legislative intent; which persons performing services for a subdivision of government are now to be covered by workmen's compensation insurance along with the employees of such subdivision covered under heretofore existing Workmen's Compensation Law?

I believe it to be notable that prior to the above-mentioned Acts of 1955, Ch. 337, Sec. 1, *supra*, only an employee was intended by the Legislature to be covered by the Workmen's Compensation Act, although it has been clearly established by the Courts that an officer of a corporation might act in such a way as to render service both as an employee and in an official capacity. In such a case:

"\* \* \* the right to compensation must depend upon the kind of service being given at the time, the accident strikes. \* \* \*

Small, Workmen's Compensation Law of Indiana,  
Sec. 4.8, p. 79, and cases cited.

Thus, the result of the various cases, prior to 1955, which considered the dual capacity of officer and employee, has been that where such a person was serving in his *executive* or official capacity at the time he was injured, he was not entitled to workmen's compensation benefits. Generally see: Mount Pleasant Mining Corp. v. Vermillion (1946), 117 Ind. App. 33, 65 N. E. (2d) 642; Claypool Mach. Co. v. Cripe (1937), 104 Ind. App. 156, 10 N. E. (2d) 427.

The use of the word "executive officers" in Burns' 40-1701 (b), *supra*, would seem, therefore, to be an expression of the Legislature to cover that group of persons commonly denominated as officers under prior law and who prior hereto were not entitled to compensation benefits when injured while engaging in *executive* activities.

Your attention is drawn to the provision of Burns' 40-1701 (b), *supra*, which sets out that the subdivision of government may choose to specifically include an "executive officer" of the subdivision under the insurance coverage as an "employee" of the subdivision during the period the insurance contract is in effect. The choice is permissively given to the subdivision, and such subdivision is apparently given a free choice as to the beneficiaries of that selection. Our Appellate Court, in the case of Holycross & Nye, Inc. v. Nye (1933), 97 Ind. App. 372, 186 N. E. 915, has indicated that one possible test of coverage of the Workmen's Compensation Act to an officer is whether or not his salary or wage is included in the computation by the insurance carrier in arriving at the premium to be paid for such insurance.

Our Indiana Courts have repeatedly said that the Workmen's Compensation Act:

"\* \* \* is remedial in character and requires a liberal construction to the end that its humane purposes may be accomplished. \* \* \*"

Louisville, N. A. & C. R. R. Co. v. Emily (1937), 105 Ind. App. 123, 130, 12 N. E. (2d) 1002.

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and quite recently this expression has been reiterated in the case of *Pollock v. Studebaker Corp.* (1951), 230 Ind. 622, 105 N. E. (2d) 513, where our Supreme Court said, at page 625:

“This court frequently has said that the Workmen’s Compensation Law is grounded in justice and should be liberally construed to accomplish the end for which it was enacted. \* \* \* This is a rule and guide for all authorities charged with the administration of the Workmen’s Compensation Law \* \* \*.”

It is, therefore, my opinion upon a consideration of the foregoing that the term “executive officers” was intended by the Legislature to include persons serving the governmental subdivision in an executive or official capacity, as distinguished from an “employee” capacity, so as to extend workmen’s compensation benefits to those persons who serve and represent the governmental subdivisions and who are designated by the subdivision as included in the contract of workmen’s compensation insurance covering said subdivision by the payment of a premium on those individual executive officers.

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### OFFICIAL OPINION NO. 45

September 26, 1956

Mr. J. Otto Lee, Clerk  
State Election Board  
102 North Senate Avenue  
Indianapolis 4, Indiana

Dear Mr. Lee:

Your letter of September 11, 1956, has been received and reads as follows:

“A question has arisen in connection with a school consolidation election upon which the State Election Board desires your official opinion.

“The facts are as follows: After March 1, 1956, a portion of the Wilson precinct, Wayne Township, Randolph County, Indiana, was annexed into the city of Union City, Indiana. Section 79, Chapter 208, Acts of