

There is also a provision in the uniform prescribed form of teachers' contract, relative to such attendance at meetings referred to in the statute.

While I do not believe the school authorities have the right to tell any teacher what organization or association they should belong to, the decision of the purpose of said adjourned days of school is left to the local school officials and the statutes seem to contemplate *per diem* pay for such adjourned days of school for teachers attending the meetings prescribed by their local school officials.

OFFICIAL OPINION NO. 22

March 6, 1952.

Mr. Frederick T. Cretors,
State Civil Defense Director,
Department of Civil Defense,
777 North Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion in which you ask a number of questions. The first question reads as follows:

"1. Under any statutes of Indiana, is compensation by the state provided for in the event of the death or disability of Indiana civil defense volunteers, public employees or both, either during authorized civil defense training activities, actual, natural or man made disasters, or both?"

In 1951 two acts were passed concerning civil defense; Chapter 268 created the Department of Civil Defense and granted general powers.

Section 11 of this act provides in part:

"(b) Personnel of mobile support units while on duty, whether within or without the state, shall, *if they are employees of the state*, have the powers, duties,

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rights, privileges and immunities and receive the compensation incidental to their employment; and shall, if they are employees of a political subdivision of the state, and whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; and may, if they are not employees of the state or a political subdivision thereof, be compensated by the state at a rate recommended by the council and approved by the governor and the state budget committee, *and be entitled to the same rights and immunities as are provided by law for the employees of this state.* All personnel of mobile support units shall, while on duty, be subject to the operational control of the authority in charge of civil defense activities in the area in which they are serving, and may be reimbursed for all actual and necessary travel and subsistence expenses.

“(c) The state may reimburse a political subdivision for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of employees of such political subdivision while serving as members of a mobile support unit, *and for all payments for death, disability, or injury of such employees incurred in the course of such duty,* and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such mobile support unit.”

It is clear, in construing this section with the pertinent provisions of the Workmen's Compensation Act, quoted subsequently, that all personnel of mobile support units on state level are covered by workmen's compensation and the state may reimburse local units of government for compensation payments to personnel of mobile support units on local levels.

Chapter 186 deals primarily with interstate compacts. Section 8 of Chapter 186 reads as follows:

“The State of Indiana shall not be relieved for the payment of compensation or death benefits to injured members of the civil defense forces of the State of

Indiana and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid in a state other than the State of Indiana, irrespective if the injury or death were sustained outside of the State of Indiana: Provided, however, That such compensation or death benefits shall not be other than those provided to its employees by the State of Indiana under existing law and such members of the civil defense forces providing aid in a state other than the State of Indiana shall be deemed for all purposes of this section to be at all times employees only of the State of Indiana and members only of its civil defense forces.”

The Indiana Workmen’s Compensation Act, same being Chapter 172 of the Acts of 1929, as subsequently amended, provides in Section 73, same being Burns’ 40-1701, in part as follows:

“(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. * * *”

1942 Opinions of the Attorney General at page 98 held that there was no liability to volunteer civil defense workers on behalf of the state, or other governmental units, because such a volunteer was not an employee within the meaning of the Workmen’s Compensation Act.

As previously pointed out, Chapter 186 deals predominantly with interstate compacts, however, the title of that act is not limited to the subject of interstate compacts. That title begins:

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“AN ACT concerning civil defense and * * *”

It would seem to be the intention of the legislature by Section 8 of Chapter 186, particularly when construed together with Chapter 268, to make all civil defense workers employees within the meaning of the Workmen's Compensation Act.

Therefore, in answer to your question, it is my opinion that, although there is some doubt as to volunteers working within the State of Indiana other than personnel of mobile support units, all civil defense workers are covered by the provisions of the Workmen's Compensation Act. The type of activity in which they are engaged would not affect the problem, except as it might have an influence on the question of whether the person involved was an employee or a mere volunteer. Inasmuch as the appropriate acts make workmen's compensation provisions applicable in the case of unpaid volunteers, it is clearly inferable that their civilian salaries are meant to be used as a basis of compensation.

Your second question reads as follows:

“2. Would compensation be available to Indiana civil defense workers of any category on authorized civil defense activities out-of-state as well as in Indiana?”

Section 8 of Chapter 186, which was discussed at length in answer to your first question, thoroughly authorizes all civil defense workers on all civil defense activities out of the state to receive workmen's compensation from the state.

Your third question reads as follows:

“3. What categories of civil defense personnel would be eligible for compensation and what provisions are required to establish eligibility?”

Except for the provisions of Section 11 of Chapter 268, the only categories pertinent would be those of employee or volunteer and if Section 8 requires volunteers to be treated as employees, there are no particular categories. The determination otherwise is whether or not the person involved is serving under a contract or hire or apprenticeship, or implied, as stated in the Workmen's Compensation Act, as previously quoted.

Your fourth question reads as follows:

“4. What is the financial extent of the state’s liability for compensation to civil defense workers?”

The extent of the state’s financial responsibility would be the benefits accruing under the Workmen’s Compensation Act as it exists, or existed, at the time of any injury.

Your fifth question reads as follows:

“5. From what source could funds be provided for compensation payments?”

Inasmuch as compensation under the Workmen’s Compensation Act is an ordinary expense of operation, payments could be made from any appropriation for civil defense expenditures not limited or restricted to purposes which exclude payment of expenses of workmen’s compensation benefits.

Your sixth question reads as follows:

“6. What procedure would be required to file claims for death or disability compensation?”

Inasmuch as the persons involved in this question are merely brought within the terms of the Workmen’s Compensation Act, the usual procedure for filing workmen’s compensation claims should be followed.

Your seventh question reads as follows:

“7. In the event Congressional legislation authorizes funds on a one to one matching basis with the state for compensation payments to civil defense workers, can Indiana legally take advantage thereof?”

Section 6(a) (4) of Chapter 268 of the Acts of 1951 gives the Department of Civil Defense the authority to cooperate with the federal government. There is no specific authorization to receive funds from the federal government for compensation payments. However, if the federal grant were given without any restriction which could not be met by the state it would seem to be within the authority of the department to accept federal aid in this regard, subject to availability of

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funds appropriated for civil defense purposes. However, ultimate questions could be avoided by an act specifically accepting or authorizing the acceptance of the terms of any federal grant in this regard.

Your eighth question reads as follows:

“8. Could any of the foregoing benefits be made available to civil defense workers coming in to Indiana at the request of the Governor or his authorized representative from states with which the State of Indiana has a mutual aid agreement?”

Throughout Chapter 186 and Chapter 268 it is contemplated that the State of Indiana will make all compensation payments and that all agreements with other states will be absolutely reciprocal. There are additional provisions for reimbursing other states for expenditures for aid grant to the State of Indiana. Thus it would seem that the State of Indiana would have no authority to grant compensation, or other benefits, to defense workers from another state but would ultimately pay for such benefits by reimbursement to the state furnishing aid.

OFFICIAL OPINION NO. 23

March 7, 1952.

Dr. Carl A. Frech, D.D.S.,
Secretary-Treasurer,
Indiana State Board of Dental Examiners,
Gary National Bank Building,
Gary, Ind.

Dear Dr. Frech:

Your letter of January 18, 1952, has been received in which you request an official opinion on the following question:

“Is the secretary of the Board of Dental Examiners entitled to per diems for service rendered outside the Board office, in addition to the salary allowed him for the conduct of the Board office?”