

OFFICIAL OPINION NO. 99

November 20, 1951.

Hon. Felix J. Brown,
Secretary,
Indiana World War Memorial,
431 North Meridian Street,
Indianapolis 4, Indiana.

Dear Mr. Brown:

I have your letter requesting an opinion reading in part as follows:

“The Board of Trustees of the Indiana World War Memorial, has directed me to request an Official Opinion from your office as follows:

“Should we carry compensation insurance on our employees?”

Section 73 of the Indiana Workmen's Compensation Act (Acts 1929, Chapter 172 as amended, Acts 1933, Chapter 243; 40-1701 Burns Indiana Statutes Annotated 1940 Replacement) defines “employer” 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 service of another for pay. * * *”

In the same section, the term “Employee” is defined as follows:

“(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. * * *”

Section 18 of the Indiana Compensation Act (Acts 1929, Chapter 172: 40-1218 Burns Indiana Statutes Annotated 1940 Replacement) reads:

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“The provisions of this Act shall apply to the state, to all political divisions thereof, to all municipal corporations within the state, to persons, partnerships and corporations engaged in mining coal, and to the employees thereof, without any right of exemption from the compensation provisions hereof.”

Section 5 of the Indiana Workmen's Compensation Act (Acts 1929, Chapter 172; 40-1205 Burns Indiana Statutes Annotated 1940 Replacement) provides:

“Every ‘employer’ who accepts or is bound by the compensation provisions of the Act, ‘except the state, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, state institutions, state boards, state commission, * * * shall insure the payment of compensation to his employees and their dependents * * *.’”

A Board of Trustees to be known as “Trustees of the Indiana World War Memorial” was created by the Indiana legislature at the Special Session held in 1920 (Acts 1920 Spec. Sess. Chapter 50; Section 59-201 to 59-226 Burns Indiana Statutes Annotated 1951 Replacement). That Act provides for the appointment of the members of the Board by the Governor, the powers and authority of the board including acquiring and maintaining property in the City of Indianapolis as a War Memorial, title to remain, however, in the State of Indiana. Without setting out the details of the provisions of said Act creating the Board of Trustees to be known as “Trustees of the Indiana World War Memorial”, I am of the opinion that the board constitutes a political division as that term is used in Sections 18 and 73 of the Indiana Workmen's Compensation law (*supra*); and that it is within the meaning of the “state boards” as that term is used in Section 5 of the Indiana Workmen's Compensation Act (*supra*).

If there are employees under contract of hire or apprenticeship with the Board of Trustees of the Indiana World War Memorial whose services are being used for pay by such board, I believe the effect of those provisions of the statute is to bring such board within the Indiana Workmen's Compensation Act and the board would be liable to any employee for compensation who receives injuries, in

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accordance with the provisions of the Indiana Workmen's Compensation Act. In other words, the Board of Trustees of the Indiana World War Memorial is liable under the Indiana Workmen's Compensation Act for compensation on account of injuries to its employees, in the same way as are other employers in Indiana.

However, by Section 5 of the Act, (*supra*) the board is exempt from the requirement to insure the payment of compensation to its employees and their dependents; which means, of course, the board is not required by law to carry compensation insurance to insure its liability for compensation under the Indiana Workmen's Compensation Act.

Inasmuch as the law does not require the Board of Trustees of Indiana World War Memorial to insure the payment of compensation, it becomes a matter for the exercise of judgment in the discretion of a board in determining whether it should purchase a compensation policy to insure its liability for the payment of compensation under the Compensation Act.

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November 26, 1951.

Miss Sue Munn,
Secretary,
State Board of Beauty
Culturist Examiners,
301 State House,
Indianapolis, Indiana.

Dear Miss Munn:

Your letter of November 13, 1951, has been received requesting an official opinion on the following question:

"The Indiana State Board of Beauty Culturists Examiners is desirous of obtaining an opinion, from your office, as to whether this Board could proceed in any manner to work out reciprocity between various states with reference to Beauty Culture, where the educational requirements of that state is not below the requirements prescribed by the Statutes of the State of Indiana."