

township officials are authorized to and have officially recognized said fire companies as a part of the township fire department.

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OFFICIAL OPINION NO. 14

April 17, 1947.

Hon. C. E. Ruston, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 10, 1947 which reads as follows:

“It has come to our attention that some counties in the state of Indiana insist that all officials and employees of the county be included in the policies of insurance written under the workmen’s compensation act.

“It is our understanding that this insurance applies only to employees as distinguished from officers and any expenditure of public funds to include such public officers under the insurance coverage would be illegal.

“We are now confronted with an endorsement which is made a part of the policy which the county purchases and which covers both employees and officers under the provisions of the workmen’s compensation law.

“Will you kindly give us your official opinion upon the following questions.

“Does an endorsement to a policy written under the workmen’s compensation act which endorsement provides that both employees and officials shall be covered under such policy be a valid contract as to such endorsement.”

The provisions of the Indiana Workmen's Compensation Act are compulsory as to the State and its political subdivisions. Section 40-1218, 1933, Burns' Pocket Supplement, provides as follows:

"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, except as provided in amended section 15 (Sec. 40-1215) of this act."

Another pertinent portion of the compensation act and one which we should give consideration is Section 40-1202, Burns' 1933 Pocket Supplement. This section provides:

"From and after the taking effect of this act, every employer and every employee, except as herein stated, shall be presumed to have accepted the provisions of this act, respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby; unless he is hereby authorized so to do and shall have given prior to any accident resulting in injury or death notice to the contrary in the manner herein provided. This act shall not apply to railroad employees engaged in train service, as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto. This act shall not apply to employees of municipal corporations in this state who are members of the fire department or police department of any such municipality and who are also members of a firemen's pension fund or of a police pension fund."

In construing this section, our courts have held that officers, both public and private, though employees in one sense of the word, are not employees within the meaning of the compensation act. Neither public nor private officers

are entitled to the benefits of the Indiana Workmen's Compensation Act.

State v. Nattkemper (1926), 86 Ind. App. 85,  
156 N. E. 168;

Manfield & Firman Company v. Manfield  
(1932), 95 Ind. App. 70, 182 N. E. 539;

Holycross & Nye, Inc. v. Nye (1933), 97 Ind.  
App. 372, 186 N. E. 915;

Macshir Company v. McFarland (1934), 99  
Ind. App. 196, 190 N. E. 69.

Since "officers" are not within the provisions of the Indiana Workmen's Compensation Act, the question before me for determination is whether county commissioners in their discretion may contract for insurance coverage for them. In other words, may they expend county monies for something which is not specifically authorized by statute? In this regard, I quote from State *ex rel.* v. Goldthait (1909), 172 Ind. 210 at page 216:

"\* \* \* It must be borne in mind that the office of county commissioner is not a constitutional office, and never has been. In the adoption of the new Constitution, county boards were recognized as agents in the public business. R. S. 1843, p. 181; Const., Art. 6, Sec. 10. While they have extensive administrative functions with respect to which they may have implied and discretionary powers, *they have no such powers in their governmental contractual relations. They are limited governmental agents, and must find their powers in their governmental contractual relations and capacity, by virtue of some statute.* Counties are local subdivisions of the State, created by the sovereign power of the State, and its own sovereign will, for governmental purposes, without the particular solicitation, consent or concurrence of the inhabitants of the county, and their powers are limited, and must be exercised in the manner provided by statute. Myers v. Gibson (1897), 147 Ind. 452; State, *ex rel.* v. Hart (1896), 144 Ind. 107; 33 L. R. A. 118; Gavin v. Board, etc. (1885), 104 Ind. 201;

Board, etc. v. Allman, (1895), 142 Ind. 573, 39 L. R. A. 58. \* \* \*” (Emphasis ours)

In view of the statutes and authorities quoted, I am of the opinion a contract by a county to purchase a policy of insurance as described by you in your letter, extending the coverage beyond the requirements of the law, is illegal and invalid.

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OFFICIAL OPINION NO. 15

April 24, 1947.

Mr. LeRoy E. Yoder, Chairman,  
Public Service Commission of Indiana,  
State House,  
Indianapolis, Indiana.

Dear Mr. Yoder:

I have before me your request for an official opinion in the matter of the petition sent by certain light and power users of the Boonville Municipal Light and Power Company, Boonville, Indiana, wherein they request the Public Service Commission to investigate an act by the common council of the City of Boonville on November 19, 1946 and made effective by them on November 25, 1946, and wherein it is further requested by said petitioners that the Public Service Commission of Indiana hold a formal hearing on said rates as provided for in the Acts of the General Assembly of 1913, Chapter 76, Section 1, page 167, Burns' 1926, Section 12672, and acts amendatory thereto.

You state that this particular municipal utility came into being some time in 1940 or 1941 which was, you state, after the 1933 amendment to the Acts of 1913, which, seemingly, took away from the Commission jurisdiction over most of municipal plant activities. You further state that the statutes, as a whole, are not too clear as to just what jurisdiction the Commission has over municipal utilities and that there is a great deal of difference of opinion as to the interpretation of the acts. In view of the foregoing representa-