CIVILIAN DEFENSE: No liability against either defense councils, or cities, towns or counties arises when volunteer worker is injured.

CITIES: Governmental unit is not liable for injuries received by a Civilian Defense volunteer.

WORKMEN'S COMPENSATION: Governmental unit is not liable for injuries received by a Civilian Defense volunteer.

April 27, 1942.

Mr. Clarence A. Jackson, Director,
Indiana Defense Council,
Board of Trade Building,
Indianapolis, Indiana.

Dear Mr. Jackson:

I have before me your request that an official opinion issue in response to the following inquiry:

"I am wondering if your office could give us whatever information you think advisable to be placed in the hands of Local Defense Councils and particularly the Mayors and City Councils. Throughout Indiana there will be literally thousands of these volunteers working as extra firemen and extra policemen, wardens, etc. It is reasonable to assume that there will be some accidents and some liability claims."

The local Civilian Defense Councils, and Indiana cities, towns and counties are not liable in damages for injuries sustained by civilan defense volunteers.

In the absence of legislative enactment to the contrary, the general rule is that a governmental unit is not liable for injuries received by a volunteer. In Howard v. City of Stillwell (1927), 171 Minn. 391, 214 N. W. 656, the court held that a person who volunteered to repair a broken wire in a city's fire signal system could not recover, when injured due to a rotten pole upon which the wire was strung. See also: Thompson v. City of Aleion (1927), 115 Neb. 208, 212 N. W. 37; and Wild v. City of Paterson (1885), 47 N. J. L. 406, 1 Atl. 390.

Somewhat analagous in principal are the cases dealing with the liability of cities for injuries sustained by W. P. A.
workers. The courts have generally denied injured W. P. A.
workers the right to recover damages under the Workmen's
Compensation Law from the city or town for whose ultimate
benefit the W. P. A. project was designed. City of Los An-
geles v. Industrial Accident Commission (1937), 9 Cal. (2d)
705, 72 Pac. (2d) 540; Taylor v. City of Los Angeles (1938),
29 Cal.App. (2d) 181, 84 Pac. (2d) 242; Hoover v. Independent
School District (1936) 220 Iowa 1364, 264 N. W. 611; State v.
Nevada Industrial Commission (1934), 55 Nev. 343, 34 Pac.
(2d) 408; Shelton v. City of Greenville (1935), 169 Tenn. 366,
87 S. W. (2d) 1016; South Dakota Employers Protective As-
vociation v. Peaze (1937), 65 S. D. 195, 272 N. W. 806; Man-
ning v. State (1937), 123 Conn. 504, 196 Atl. 777; McQuillen
on Municipal Corporations, Sec. 441. While the decisions
denying municipal liability in the W. P. A. cases are not sus-
ceptible of being explained upon a single thesis, the under-
lying idea appears to be that the W. P. A. is a national rather
than a local effort. The application to the instant problem is
apparent when we consider that the Civilian Defense activi-
ties represent a national rather than an entirely local effort.
A further application is that in the W. P. A. cases the work-
ers were paid, while Civilian Defense volunteers will not be
compensated,—and therefore there is still more reason to
exclude such Civilian Defense volunteers from the classifica-
tion of "employees."

The Civilian Defense volunteers will not be employees
within the scope of the Indiana Workmen's Compensation
Act (Chap. 172, Indiana Acts of 1929, p. 536 as amended by
Chap. 243, Indiana Acts of 1933, p. 1103, 8 Burns' Indiana
Statutes Annotated, 1940 Replacement, 40-1701). Such vol-
unteers will not be "under any contract of hire or apprentice-
ship, written or implied." In fact, no contractual relationship
will exist. Your letter indicates that these volunteers will not
receive any pay of any kind or character. Neither the local
Civilian Defense Council nor the counties, cities or towns,
will be an "employer" within the purview of the Workmen's
Compensation Act since neither of them will, in the instant
cases, be "using the services of another for pay." See In re
Moore (1933), 97 Ind. App. 492, 500. The relationship of
employer and employee essential to liability under the Indiana
Workmen's Compensation Act does not exist insofar as the
Civilian Defense volunteer is concerned.