

This Act has never been expressly repealed and the executive order of April 15, 1933, placed the Board of Public Printing under the department of public works. Section 27 of the Executive Administrative Act, the same being chapter 4 of the Acts of the Indiana General Assembly, 1933, provides that:

“The governor constituting the executive department, and the several boards of departments, each in the particular department, * * * shall have full power to change or curtail or abolish the offices constituting the bureaus, commissions, boards or agencies created or designated by statute or otherwise for carrying out the functions or purposes of any such bureau, commission, board or agency. * * *”

Since the membership of the Board of Public Printing is made up of elective public officials it is my opinion that the governor would not be authorized to change the personnel of said board.

It is my further opinion, however, that the governor, together with the other members constituting the Board of Department of Public Works, would have authority, under section 27 above quoted, to change or abolish the duties devolving upon the present Board of Public Printing.

LABOR, DIVISION OF: Jurisdiction. Relation of employer and employee. Operators of gas station held to be employees.

June 10, 1937.

Mr. Thomas R. Hutson, Commissioner,
Division of Labor,
Room 405, State Capitol,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of June 9, 1937, which reads as follows:

“A complaint has been filed in this office with reference to this strike between the Sinclair Oil Company, South Bend, Indiana, and the Gas Operators Union.

“We would appreciate an official opinion from your

office as to whether or not these so-called operators are operating as employer-employees or under the relationship of lessor-lessees.

"For your convenience, we are submitting our files in this case. If there is any other information you desire that will be of assistance to you, please advise."

The file attached to your request contains a photostatic copy of a lease and the gasoline and motor oil sales contract, also a set of instruments in the form in which the company endeavored to have signed by the interested parties, effective April 16, 1937.

The test in determining whether a person is employed to do certain work is the control over the work which is reserved by the employer.

Stated as a general proposition, if the person is under the control of the employer he is a servant. In this connection the ultimate question is not whether the employer actually exercises control over the doing of the work, but whether he has the right to control.

The control of work reserved in the employer, which makes the employee a mere servant, is a control not only of the result of the work but also of the means and manner of the performance thereof.

The purpose of the ownership of the oil service stations is the sale of the company's products. As indicated from statements in the file attached to your request some of the dealers or operators of the stations pay no rent. It is alleged that they are free to buy from sources other than the company, but it is observed that if they purchase a considerable part of their merchandise from any other source the company would cancel the contract, since the company is benefited only by the sale of its products.

It is indicated that some of the dealers or operators pay cash rental of one dollar a year, others look for their compensation to the retail profit of the station, and as compensation receive the entire retail profit, while others are required to pay part of the retail earnings of the station and retain the balance as their compensation. They are in the same position as employees working on commission notwithstanding title to the merchandise handled vest in them upon delivery. They are required to pay the wholesale price but retain the excess or the retail price as their commission.

To say that these stations and dealers or operators in their operations are not under the control of the company would be to ignore the fact that contracts and agency agreements have been entered into, doubtless for the same reasons which impelled their adoption and the plain fact is that the dealer or operator must obey the every dictate of the company or lose their contract and station.

Therefore, it is my opinion that the relationship between the company and the dealer or operator of the stations in question is that of employer and employee.

The contracts in question have the following provision:

“To have and to hold the above demised and leased premises, and all rights, privileges, and appurtenances thereunto belonging, unto lessee for and during the following term:

“Six (6) months beginning on the 16th day of October, 1936, and thereafter for successive terms of six months each, provided, however, that either party may terminate and cancel this lease at the end of the first six-month term or any successive six-month term, on thirty (30) days’ written notice given prior to the end of any such term.”

Under the above provision these contracts run for an indefinite period of time unless cancelled under the terms of said contract.

However, if evidence is furnished your commissioner to the effect that these contracts have been cancelled in accordance with their own terms, thereby terminating the relationship of employer and employee, your board would not have jurisdiction.

**FINANCIAL INSTITUTIONS, DEPARTMENT OF: Banks
and banking, officers acting as notaries.**

June 11, 1937.

Hon. Richard A. McKinley, Director,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request for an opinion as to whether or not a director of a bank may