

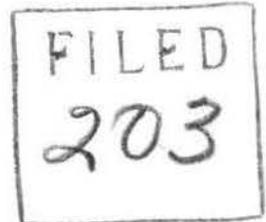
WORKMEN'S COMPENSATION:  
DEPARTMENT OF CORRECTIONS:

An inmate of the Missouri State Penitentiary assigned for work in the license plate manufacturing division who sustains an injury as a result of an accident, arising out and in the course of said employment, is not an employee of the Department of Corrections, and, therefore, not entitled to benefits of the Workmen's Compensation Act.

FOR OPINION 203  
(1964)

June 9, 1964

Honorable Spencer Givens  
Director  
Division of Workmen's Compensation  
State Office Building  
Jefferson City, Missouri



Dear Mr. Givens:

In your letter of May 19, 1964, you request an opinion on the following question:

Is an inmate of the Missouri State Penitentiary, who is employed in the license plate manufacturing division and who sustains an injury as a result of an accident arising out of and in the course of said employment, an employee of the Department of Corrections and therefore entitled to the benefits of the Workmen's Compensation Act?

Section 216.183, RSMo 1959, extends the provisions of the Workmen's Compensation Law to all of the employees of the Department of Corrections.

Section 287.030, RSMo 1959, defines an "employer" under the act as every person and corporation using the services of another for pay.

Section 287.020, (1), provides that the term "employee" includes every person in the services of an employer, under any contract of hire, express or implied, oral or written, or under any appointment or election.

Honorable Spencer Givens

99 C.J.S., §116, page 408, Workmen's Compensation, states: "A convict or prisoner performing work for the county or municipality during the term of his imprisonment is not an employee within the (Workmen's Compensation) act."

This state has passed a statute limiting the rights of persons convicted of a crime, commonly called the "Civil Death Statute". This statute, Section 222.010, RSMo 1959, provides that a sentence to imprisonment in an institution within the State Department of Corrections for a term less than life suspends all civil rights of the person so sentenced to the term thereof, and it further provides that a person sentenced to life imprisonment shall be deemed civilly dead. Concerning the above statute, the case of Gray v. Gray, 79 S.W. 505, states:

"The civil death which attaches to a person as an incident of his conviction of an infamous crime destroys his right to sue or to make executory contracts.  
\* \* \*"

Larson on "Workmen's Compensation Law", Volume 1, Section 47.31, says:

"Convicts and prisoners have usually been denied compensation for injuries sustained in connection with work done within the prison, even when some kind of reward attended their exertions. The reason given is that such a convict cannot and does not make a true contract of hire with the authorities by whom he is confined."

In 1963 the Supreme Court of Indiana passed on the identical question under discussion here. Schraner v. State of Indiana, Department of Corrections, 189 N.E. 2d 119. The statutes there under discussion, defining both "employee" and "employer", were identical to Missouri's. The court held that there could be no contract of employment because the convict could not become an employee of the state. The court said at l.c. 123:

Honorable Spencer Givens

" \* \* \* To permit inmates of penal institutions to avail themselves of the protection of the workmen's compensation law would establish a new and novel procedure."

This rule has been followed generally. In *Scott v. City of Hobbs*, 366 P. 2d 854 (N.M. Sup.), a prisoner who was working out a fine under a city ordinance was held not to come under the Compensation Act, and in *Jones v. Houston Insurance Company*, 134 So. 2d 377 (La.), it was held that a prison inmate, even though receiving a small wage, was not an "employee". In only rare instances has the rule holding that the prisoner is not an employee been abrogated, and in these cases the facts and circumstances were of an unusual nature, i.e., where a prisoner is "on loan" to a private corporation, *Johnson v. Industrial Commission*, 356 P. 2d 1021, (Ariz. Sup.), or under a special statute where the prisoner was working on a highway, *California Highway Commission v. Industrial Accident Commission*, 251 P. 808 (Cal. Sup.).

The direct question posed here has not been answered by the Missouri courts, but the courts elsewhere have consistently held that a convict may not avail himself of a Workmen's Compensation Act for injuries sustained, for the reason that no relationship of employer and employee exists.

This may seem to work an injustice, but under our statutes, as existing, no other conclusion could be reached.

As said by the Supreme Court in *Price v. Johnston*, 334 U.S. 266, 285; 68 Sup. Ct. 1049, 1060, "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."

#### CONCLUSION

We are of the opinion that an inmate of the Missouri State Penitentiary, assigned for work in the license plate

Honorable Spencer Givens

manufacturing division, who sustains injury as a result of an accident arising out and in the course of such employment is not an employee of the Department of Corrections and is not entitled to the benefits of the Workmen's Compensation Law, Chapter 287, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General