

WORKMEN'S COMPENSATION:  
STATE IS AN EMPLOYER:  
EXEMPTED EMPLOYMENTS:  
DEPARTMENT OF CORRECTIONS:

Legislative action necessary to give Department of Corrections authority to accept Missouri's Workmen's Compensation Law. Director of Department of Corrections, and Department of Corrections, which were created by the legislature, have no authority to accept Missouri's Workmen's Compensation Law.

October 19, 1956



Honorable Edward E. Haynes  
Personnel Officer  
Department of Corrections  
Jefferson City, Missouri

Dear Mr. Haynes:

This is in answer to your request for an official opinion from this office. Your letter reads as follows:

"The Department of Corrections is very desirous of extending Workmen's Compensation coverage to our employees. R.S. Mo. 287.090 exempts certain employments from this coverage. The State is listed as one of the exemptions. Paragraph 2 of this section provides that an exempt employer 'may bring himself within the provisions of this chapter by filing with the commission notice of his election to accept the same.'

"It would appear from the above that a notice to the Division of Workmen's Compensation of our desire for such coverage would be sufficient. However, workmen's compensation coverage was extended to employees of the Highway Commission and Highway Patrol by legislative action, R.S.No. 226.160 and 226.170. Senate Bill No. 178, Sixty Eighth General Assembly, provided for the extension of the workmen's compensation law to include employees of the Department of Corrections. It was truly agreed to and finally passed by the General Assembly but was vetoed by the Governor because of budgetary reasons.

"Will you please render a decision at your earliest convenience as to whether or not legislative action is necessary before our employees may be covered by workmen's compensation?"

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The answer to your question is that legislative action is necessary before the employees of the Department of Corrections (hereinafter referred to as the Department) may be covered by the Missouri Workmen's Compensation Law (hereinafter referred to as the Law).

The Department is part of the executive branch of our state government, and was authorized by Art. IV, Section 12, Missouri Constitution, 1945. In pursuance of this constitutional provision, the legislature created and set up the Department in 1945. Laws of Missouri, 1945, p. 723. This law, setting up the Department, was amended, Laws of Missouri, 1955, p. 318, and it is now set out in Chapter 216, Mo. Cum. Supp. 1955.

This Department is exempted from the operation of the Law. It is an employment by the state, and Section 287.090, RSMo. 1949, exempts employments by the state. That section reads as follows:

"1. Sections 287.050 to 287.080 and 287.120 of this chapter shall not apply to any of the following employments:

"(1) Employments by the state, county municipal corporation, township, school or road, drainage, swamp and levee districts, or school board, board of education, regents, curators, managers, or control commission, board or any other political subdivisions, corporation or quasi corporation thereof;

"(2) Employments of farm labor and domestic servants including family chauffeurs;

"(3) Employments which are but casual or not incidental to the operation of the usual business of the employer;

"(4) Employments in which articles and materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in the home of the employee, or on premises not under the control or management of the employer;

"(5) Employments by minor employers not determined to be engaged in an occupation hazardous to employees.

"2. Any employer in this section exempted from the operation of sections 287.050 to 287.080 and 287.120 of this chapter may bring himself within the provisions of this chapter by filing with the commission notice of his

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election to accept the same, and by keeping posted in a conspicuous place on his premises a notice thereof to be furnished by the commission, and any employee entering the services of such employer and any employee remaining in such service thirty days after the posting of such notice shall be conclusively presumed to have elected to accept this chapter unless he shall have filed with the commission and his employer a written notice that he elects to reject this chapter."

However, the second part of this section, supra, gives exempted employers the right to elect to accept the law for the benefit of their employees. If we turn to the definition section, which is Section 287.030, RSMo. 1949, it defines the state as an employer. That section reads as follows:

"The word 'employer' as used in this chapter shall be construed to mean:

"(1) Every person, partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay;

"(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi corporation, or cities under special charter, or under the commission form of government, which elects to accept this chapter by law or ordinance.

"(3) Any reference to the employer shall also include his insurer."

Since the state is defined as an employer, it can elect to accept the Law as provided in Section 287.090, supra. But the problem is whether something must be done before the state can make such an election. To answer this query properly, it is absolutely necessary that Section 287.090, supra, be read in conjunction with Section 287.030, supra. When this is done, we note that in Section 287.030, supra, the state is defined as an employer only "which elects to accept this chapter by law \* \* \*."

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Therefore, the state must comply with a condition precedent before it can be properly defined an employer, and the condition precedent is that the legislature must give the state the authority to elect to accept the Law. This is the only reasonable construction to be put upon this section (287.030, supra) of the statute.

Thus, the state (the employer), by an act of its legislature, can give the Department, a now exempt employment by the state, the authority to elect to accept the Law for the benefit of its employees. That this is the intention of the legislature, can be shown by citing two laws of that body. Both laws were mentioned in your letter requesting an opinion.

In 1945, the General Assembly passed a law extending the Law to the employees of the State Highway Commission and the employees of the State Highway Patrol. Section 226.160 and 226.170, RSMo. 1949. The Highway Department is also a part of the executive branch of our government, and was created by Art. IV, Section 12, Missouri Constitution, 1945. Prior to the law, supra, it was also an exempted employment by the state. Section 287.090, supra.

Also in 1945, the General Assembly passed a law extending the Law to the employees of the Department. However, the Governor vetoed it because of budgetary reasons. Senate Bill No. 178. As mentioned supra, the Department, a part of the executive branch of our government, was created by the legislature in pursuance of the constitutional provision, supra. It is also, as mentioned supra, an exempted employment by the state.

In regards to this proposition, we cite Larson, an outstanding authority on Workmen's Compensation Law, who says, "Missouri excludes public employees unless they are brought under the act by a law or ordinance of the political subdivision." Larson, Workmen's Compensation Law, Vol. 1, page 817.

To further buttress the proposition that legislative action is necessary to authorize the Department to elect to accept the Law, it is pertinent to call attention to the fact that the Department, as mentioned, supra, is a creature of the legislature, and Section 216.110, RSMo. 1949, provides that the chief administrative officer of the Department shall be the Director of the Department. What the Department and the Director have authority to do is set out in detail in Chapter 216, supra. That chapter does not authorize either to elect to accept the Law.

In 67 C.J.S. at page 365, it is stated that, "The powers and authority of public officers are usually fixed and determined by the law," and at page 371, it further states that, "Powers con-

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ferred on a public officer can be exercised only in the manner, and under the circumstances, prescribed by law, and any attempted exercise thereof in any other manner or under different circumstances is a nullity." And as stated in *State v. Cantley*, 52 S.W. 2d 397, 398 (1), applicable to our problem here although the facts are different, "The functions of the finance commissioner, like any other official, are limited to the powers and duties imposed upon him by the statute which creates the office."

CONCLUSION

Therefore, it is the opinion of this office that Sections 287.030 and 287.090, supra, require legislative action to give the Department of Corrections, a now exempted employment by the state, the authority to elect to accept the provisions of the Missouri Workmen's Compensation Law for the benefit of its employees.

Furthermore, Chapter 216, supra, setting out the powers and duties of the Director of the Department of Corrections and the Department of Corrections, does not give either the authority to elect to accept the Missouri Workmen's Compensation Law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

JOHN M. DALTON  
Attorney General

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