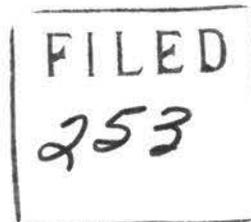


October 31, 1974

OPINION LETTER NO. 253
Answer by letter-McBride

Honorable A. J. Seier
Prosecuting Attorney
Cape Girardeau County
721 North Sunset
Cape Girardeau, Missouri 63701



Dear Mr. Seier:

This opinion is in response to your request as follows:

"Under Senate Bill 417 passed by the 77th General Assembly, the Workmen's Compensation Law was amended as follows:

"RSMo. 287.020. 1. The word 'employee' as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. . ."

"RSMo. 287.030. 1. The word 'employer' as used in this chapter shall be construed to mean: . . .
(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

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quasi corporation, or cities under special charter, or under the commission form of government."

"Under the terms of this act, would elected county officials such as County Judges, Sheriff, County Clerk, Circuit Clerk, Court of Common Pleas Clerk, Prosecuting Attorney, Coroner, etc. be considered employees under this Act?"

In an opinion of this office on February 7, 1950 (copy enclosed), it was stated that "Elective officers of a county are not employees of the county and are not covered by the Workmen's Compensation Act if such act is accepted by the county. . . ." That statement was based on a construction of the definition of the word "employee" then defined in Section 3695(a), RSMo 1939, as follows:

"The word 'employee' as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, . . ."

It is noted that this definition was the same then as now, except that it did not then contain the phrase "including executive officers of corporations."

It was then considered that the words "in the service of any employer" required the relationship of master and servant before a person would be considered an employee.

Persons in several position categories who did not satisfy the necessary relationship for inclusion in the definition of the term "employee," quoted above, were brought under the Workmen's Compensation Act by specific legislation. In 1967, the 74th General Assembly of Missouri caused executive officers of corporations to become employees by adding the phrase "including executive officers of corporations" at the end of the first sentence in the definition of the word "employee," Section 287.020, RSMo. The 75th General Assembly of Missouri (1969) provided workmen's compensation coverage for state employees not already under the provisions of the Act, and in so doing, defined state employees as follows:

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"As used in sections 105.800 to 105.850, the term 'state employee' means any person who is an elected or appointed official of the state of Missouri or who is employed by the state and earns a salary or wage in a position normally requiring the actual performance by him of duties on behalf of the state." Section 105.800, RSMo 1969

In 1973, Section 287.021 was enacted requiring each county to provide workmen's compensation insurance to cover all sheriffs and deputy sheriffs in its county. In connection therewith it was provided:

"1. As used in this chapter, the term 'employee' includes a sheriff or deputy sheriff and the term 'employer' includes a county in regard to a sheriff or deputy sheriff."

The preceding paragraph shows how the legislature enacted specific legislation in three instances to avoid the controllable service test for determining whether persons were employees for workmen's compensation purposes. The 77th General Assembly (1974) brought employments by a county, municipal corporation, township, school or road, drainage, swamp and levee district, or school board, board of education, or any other political subdivision within the Workmen's Compensation Act by removing these employments from those exempted from the operation of the Act, Section 287.090, RSMo. It did not change the definition of the word "employee" nor did it enact any specific legislation that would remove the controllable service test for determining whether or not persons are employees. It may be logically inferred that if the legislature had intended to include elected county officials in the class of persons brought within the Act, it would have done so by specific legislation as prior legislatures had done with respect to executive officers of corporation, elected state officials, and county sheriffs and deputy sheriffs.

Other than the new section, 287.021, in 1973 bringing county sheriffs under the Workmen's Compensation Law, there has been no legislation that affects the February 7, 1950, opinion of this office or the soundness of that opinion. Therefore, that opinion continues in effect but is not applicable to sheriffs who have been specifically brought under the

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Workmen's Compensation Act by Section 287.021; and it is the opinion of this office that elected county officials, except sheriffs, are not employees of the county for the purposes of the Workmen's Compensation Act.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 33
2-7-50, Givens

OPINION CHECK SHEET

OP. NO. 253

PRI. _____

Requested By: A.J. Lewis

Request Received On 6-21-74

Assigned On 6-28-74

Assigned To Mr. Bude

On _____

Preliminary Conference Held On _____

Review Draft: Target Date _____ Completed _____

Assigned For Review To Klopperbach On 8-14-74

Review: Target Date _____ Completed _____

To Opinion Chief For Review On _____ Completed _____

Revisions:

To Attorney General For Approval On _____

[] Approved [] Revision Date _____

[] Index and Digest Drafted

Returned To Writer For Issue Draft On _____

This Opinion Ready For Attorney General's Signature

Date _____ s/ _____
Opinion Chief

Date of Issue _____

For Opinion Clerk:

_____ Indexed

_____ Digest

_____ Copies Mailed

Permanent File Contents Reviewed by
Opinion Chief.

All Procedures Completed

Date _____ s/ _____
Opinion Chief