Opinion No. 32-477

June 20, 1932

BY: E. K. Neumann, Attorney General

TO: Honorable Max Fernandez, Supt. of Insurance, State Corporation Commission, Santa Fe, New Mexico.

*{*163}* We are in receipt of your letter of June 18th together with enclosures dated May 9th and June 8th from C. A. Bishop & Company wherein it is desired to know if members of volunteer fire departments in this state are entitled to benefits under the State Workmen's Compensation Laws.

From an entire reading of our state law on this subject it is our opinion that in order to entitle a workman to benefits under the law there must be a contract of hiring, either express or implied.

A workman, under our law, includes also the term employee and means any person who has entered into the employment of or work under contract of service or apprenticeship with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business.

In Volume I of Schneider on Workmen's Compensation Laws at page 180, we find a quotation from a Utah case as follows:

"An employee is one who works for and under the control of another for hire."

It is also stated in said citation that the relation of employer and employee is contractual. To create the relation there must be an express contract or such acts as will show unequivocally that the parties recognize one another as master and servant.

In numerous cases involving ordinary volunteers, it has been held that compensation was not payable under Workmen's Compensation Acts.

In the case entitled Stevens vs. Village of Nashwauk, 161 Minn. 20, 200 N. W. 927, it was held that volunteer firemen are within the Minn. Act. However, the Court was of the opinion that under the terms of that act volunteer firemen were entitled to benefits, and also it must be borne in mind that in that case such volunteer firemen were entitled to pay for services rendered at the rate of $ 2.00 for each call made and $ 1.00 per hour for all time over one hour.

In the case entitled Bingham City, et al vs. Industrial Commission of Utah, 66 Utah 390; 243 P. 113, it was held that a volunteer fireman was not the employee of the city. In that case the city by ordinance had created a volunteer fire department. The city had no voice in the admission of members to such department, or in their suspension or

expulsion. The city furnished all equipment and apparatus and contributed $ 25.00 monthly for the *{*164}* maintenance and upkeep of the fire company. No provision was made for any salary or compensation.

The Court held that under the Workmen's Compensation Act it was essential that some compensation be in fact paid or payable to the employee, and that the term employee indicated a person hired to work for wages as the employer might direct and that in this case there was no contractual relations between the volunteer firemen and the city.

Under the authority in this case we are constrained to take the position that a volunteer fireman without some contract of employment between himself and the city is not entitled to benefits under our Workmen's Compensation Laws.

By Frank H. Patton,

Asst. Attorney General