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FILE NO. S-452

LABOR:
Workmen's Compensation Act -
City is an employer automatically
and without election subject to the Act
only in so far as it is engaged in an
extrahazardous enterprise under section 3.

Honorable Alexander P. White
Chairman
Industrial Commission
State of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. White:

I have your recent letter requesting my opinion concerning the interpretation of sections 1, 3 and 4 of the Workmen's Compensation Act (Ill. Rev. Stat. 1971, chap. 48, pars. 138.1, 138.3, 138.4).

In pertinent part, your letter states the position of the City of Springfield with regard to its coverage under the Workmen's Compensation Act:

> "The City of Springfield has requested the Illinois Industrial Commission for self-insured status pursuant to Section 4 of the Workmen's Compensation Act. The City, however, takes the position that they are not an employer as defined by Section 1 of the Act, except for those Departments of the City engaged in the extra-hazardous types of employment specified in Section 3. Their theory, which they allege is supported by decisions of the Illinois Supreme Court, is that they do not wish to elect to come under the provisions of the Workmen's Compensation Act; that they do not have compulsory coverage over those employees not engaged in hazardous activities; and that they can apply for self-insured status only over those employees covered by the Act."

Under the Workmen's Compensation Act an employer who is not automatically subject to its provisions may elect to come under the Act by filing notice of his election with the Industrial Commission or by properly insuring his liability to pay compensation pursuant to the Act or both. Section 3 of the Act, however, makes it applicable

automatically and without election to all employers and their employees in any department of a business or enterprise designated as extrahazardous by the express terms of the Act.

The author in 37 I. L. P. Workmen's Compensation section 52 in discussing the scope of the Act's coverage as it applies to a municipal corporation, such as the City of Springfield, states that it is an employer subject to the Act only in so far as it is engaged in an enterprise designated as extrahazardous. At p. 283-284 it is said:

> "Under Workmen's Compensation Act §3, providing that the Act applies automatically and without election to municipal corporations engaged in any department of an enterprise designated as extrahazardous, a municipal corporation is an employer automatically subject to the Act in so far as it is engaged in an enterprise designated as extrahazardous. On the contrary, a municipal corporation is not automatically subject to the Act if it does not engage in any enterprise or business or carry on activities designated as extrahazardous by the Act. The nature of the activities of the municipal corporation determines whether it is automatically subject to the Act, and it is immaterial

> whether it is engaged in a governmental or a proprietary function.
>
> If a municipal employee is engaged in a department of a municipal enterprise which is extrahazardous, the specific work in which he is engaged need not be part of the extrahazardous undertaking or bring him in contact therewith in order to warrant recovery of compensation."

Winnebago County v. Industrial Commission, 34 Ill. 2nd 332 (March 1966) is the latest exposition of our Supreme Court dealing with the Act's coverage as applied to a county and its employees. There the court considered and construed the same sections of the Act that are involved here and which concern the application of the Act to a municipal corporation and its employees. The decision in Winnebago does not appear to be distinguishable on any ground and it will, therefore, be considered as controlling in the interpretation of the various sections of the Act as such sections pertain to the coverage of a municipal corporation.

The Winnebago case involved a claim for death benefits under the Workmen's Compensation Act filed by the widow and children of an assistant State's Attorney of Winnebago County who

sustained a fatal heart attack while in the course of his employment by the County. The Commission held that he was an employee subject to the Act and sustained an award pursuant to the Act's provisions. The Circuit Court of Winnebago County affirmed the Commission's order. The Supreme Court, however, reversed the lower court judgment and set the award aside.

In reaching this decision the Court stated the precise issue before it at page 333:

> "The county contends that, having never elected to be bound by the Workmen's Compensation Act, it is not liable for payment of benefits for the death of an employee engaged in non-extrahazardous duties. Claimants, on the other hand, contend that all employees of a county are automatically covered by the act whether or not the duties are extrahazardous. And while other contentions are raised, the matter of the act's coverage is the determinative issue."

Continuing at page 333-334 the Court construed pertinent portions of Section 2 and Section 3 of the Workmen's Compensation Act and concluded that a county not having elected to pay compensation according to the provisions of the Act, the employees of such county would have only the automatic coverage for hazardous duties pursuant to Section 3 of said

Act. In this connection the Court said as follows:

> "At the time of the death involved, and for approximately forty years prior thereto, section 3 of the Workmen's Compensation Act provided: 'The provisions of this Act hereinafter following shall apply automatically and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely: * * *.' (Ill. Rev. Stat. 1961, chap. 48, par. 138.2; see also, Laws of 1921, pp. 447-448.) Section 2 of the act, first enacted in 1951, provided in pertinent part: 'An employer in this State, who does not come within the classes enumerated by Section 3 of this Act, may elect to provide and pay compensation for accidental injuries sustained by any employee, arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided. The State of Illinois hereby elects to provide and pay compensation according to the provisions of this Act.' Ill. Rev. Stat. 1961, chap. 48, par. 138.2; see also Laws of 1951, p. 1060.
>
> In view of the express statutory language, it is apparent that by reason of the State's election its employees are covered by the act whether or not engaged in one of the hazardous enterprises enumerated in section 3, but that employees of other political units are covered only if they engage in the designated extrahazardous enterprises, or if the employing unit has elected to be bound by the other provisions of the act. Stated otherwise, and as applied to this case, if a county

> has not elected to 'provide and pay compensation according to the provisions of this act,' county employees have only the automatic coverage for hazardous duties directed by section 3. * * *"

In Winnebago, Section 1 of the Act defining the term "employer" was relied on by the claimants to bring the county and all its employees within the scope of the Act's coverage without election. The Commission, here, apparently takes the same position with respect to the coverage of the City of Springfield and all its employees. The Court in the Winnebago case rejected the contention of the claimants saying at page 335:

> "It is true, as claimants point out, that section 1 of the act, defines the term 'employer', as meaning, in part: 'The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.' (Ill. Rev. Stat. 1961, chap. 48, par. 138.1 (a) 1.). But this does not mean that all employees of such political entities are automatically and fully covered by the entire act, any more than the act's definition of an 'employee' could be said to impose automatic coverage without regard to election by the employer. Furthermore, to arrive at the coverage intended from the definition of an 'employer' found in section 1, would cause sections 2 and 3 to be mere surplusage, and that is not to be presumed in statutory construction. (Skillet Fork River Outlet Union Drainage Dist. v. Fogle, 382,Ill. 77, 85)

> By the same token section 1 cannot be construed as causing the act to apply automatically to all governmental employees, for to do so would make the specific election of the State in section 2 to be without purpose. Nor can it be said that the effect of section 3 is to cause the entire act to apply to cities, counties, and the like without election. Rather, as this court replied to a similar contention in the Village of Chapin v. Industrial Com. 336 Ill. 461, 465-466, by specifically mentioning the State and other political units in section 3, the legislature sought only to remove doubt as to whether such governmental units were to be considered employers within the meaning of section 3."

In denying the award to claimants the Court held that since Winnebago County had not elected to come under the Act and since decedent assistant State's Attorney had not been employed by the County in an extrahazardous enterprise as designated in Section 3, a construction of Section 1 defining the term "employer" so as to arrive at such coverage automatically and without election would cause sections 2 and 3 to be mere surplusage.

Accordingly, in view of the foregoing, it is my opinion that the City of Springfield can not be considered an "employer' as defined in Section 1 of the Act so as to bring all the city employees within the Act's coverage without election.

Only those employees of the city engaged in an enterprise designated as being extrahazardous by Section 3 are automatically and without election brought within the coverage of said Act. It would necessarily follow, therefore, that the provisions of Section 4 of the Act would permit the City of Springfield to qualify as a self-insurer to cover those city employees who are brought within the coverage of the Act by Section 3.

Very truly yours,

ATTORNEY GENERAL