

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

August 19, 1966

Matthew Furze, Director  
State Department of Public Welfare  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 67-68 pg. 21

**Public Welfare Department. Title V of the Federal Economic Opportunity Act and the Workmen's Compensation Act.**

You have requested an opinion of this office stating the following facts:

"The Title V program is administered in this state through the Department of Public Welfare by directive of the Administrator of the Economic Opportunity Act. The source of all funds for this program is federal without state participation in financing however, administrative money and program money is received and disbursed from the State Treasury in a manner analogous to the receipt and disbursement of money received from the federal government in connection with the Public Assistance Programs of the State Department of Public Welfare.

"In the operation of the program and administrative staff consisting of supervisors, coordinators or consultants, project foremen, social workers and stenographic-clerical workers are employed, whose salaries are paid through the state payroll mechanism upon warrants issued by the State Auditor. They are hired subject to qualification requirements of the State, and may be suspended or discharged in the same manner as any other state employee. These members of staff are not, however, included within the employee count limited by the legislature by directive for the Department of Public Welfare, but expressly exempted from such limitation.

"Persons participating in the projects under the Title V program as work trainees will receive money payments each month in the same manner as public assistance recipients. Such payments will be predicated upon maintenance needs of the trainee and his family rather than as compensation for services performed.

"By federal law or regulation, we understand that Workmen's Compensation or comparable insurance coverage is required for both administrative personnel and for work trainees under the Title V program."

You then ask the following questions:

"1. Are persons employed in administrative capacities in the positions above mentioned under Title V of the Economic Opportunity Act to be covered under the Workmen's Compensation Plan of the State of South Dakota for its employees?"

"2. Are persons receiving work experience training under projects of Title V of the Economic Opportunity Act to be considered as state employees so as to be covered under the Workmen's Compensation Plan of the State of South Dakota for its employees?"

It is the purpose of Title V "to expand the opportunities for construction work experience and other needed training or basic education available to persons who are unable to support or care for their families." (88th Congress, Second Session, 11 R 10440, March 16, 1964.)

This flexibility will also permit states to liberalize eligibility requirements, adopt broader requirements and meet full need as determined by state assistance standards.

We have in the past held that the State Department of Public Welfare is authorized by statute to provide services necessary to develop and administer projects under Title V of the Economic Opportunity Act." (Official Opinion issued August 13, 1965, to Matthew Furze.)

SDC 1960 Supp. 64.0102 provides that an "employer, shall include the state and any municipal corporation within the state or any political subdivision of this state and any individual firm, or corporation... using the service of another for pay..."

SDC 1960 Supp 64.0102 (2) provides that an "employer, (is) every person ...in the service of another under any contract of employment, except: (b) (as amended by Ch. 262 of the Session Laws of 1966) any official of the state or any subdivision of government elected or appointed for a regular term of office. We have written an opinion covering Section 6 above, (1963-64 AGR 16) in which we stated that "those state officials who are not appointed for a definite term or period of time. . . who hold offices at the pleasure of the appointed power would, of course, be covered by Workmen's Compensation."

Our immediate predecessor held in 1961-62 AGR 124 that volunteers performing civil defense services pressed into service by the county, state or municipal government or any other political subdivision could be covered by the Workmen's Compensation Act.

We have held in our opinion to Mr. Richard Larson, Director of the South Dakota State Agency for -Surplus Property of July 21, 1965, that employees of the above agency are state employees; this situation involved the use of Federal Surplus commodities.

In our opinion to Mr. E. B. Coacher, Executive Director of the Board of Regents, January 7, 1966, in which funds are allocated for students for educational purposes, we held that such persons were employees and thus eligible under the Workmen's Compensation Plan.

In *Brandt v CO-OP Elevator co. of Revilio et al.*, 69 SD 77, 5 NW2d 897 (1942), the Supreme Court of South Dakota held that "the test of employer-employee relationship within the Workmen's Compensation Act, is the right of the employer under the contract to

control the manner and continuance of the particular service and the final result." (64.0101) Whereas in a more recent case, *Gulbrandson v Town of Midland*, 72 SD 465, 36 NW2d 644 (1949), the Supreme Court held that where "a private citizen is killed while responding to a peace officers request for assistance on arresting criminals, " he is eligible for Workmen's Compensation.

The Title V program is administered in this state through the Department of Public Welfare by directive of the Administrator of the Economic Opportunity Act. The source of all funds of this program is federal, without the state participation in financing; however, administrative money and program money is received and distributed from the State Treasury in a manner analogous to the receipt and disbursement of money received from the federal government.

In the operation of the program an administrative staff consisting of supervisors, coordinators or consultants, project foremen, social workers, and stenographic-clerical workers are employed whose salaries are paid through the state payroll mechanism upon warrants issued by the state. They are hired subject to qualification requirements of the state, and may be suspended or discharged in the same manner as any other state employee.

However, it is important to note that these staff members are not included within the employer count limited by the legislature, by directive of the Department of Public Welfare, but are expressly exempted from such limitations.

It is here to be noted that the first group, described in question No. 1 fall directly under the past decisions of the South Dakota Supreme Court and the opinions of this office. We must hold that group No. 1 qualifies for Workmen's Compensation as they comply with the criteria set forth in the South Dakota Statutes. They are state employees. However, because of the peculiar nature of their employment, and because the program is one of one hundred percent financing by the federal government, the proper state officials acting as agents of the federal government in the operation of such program, it is my opinion that in the event an expenditure of state funds may be necessary in order to furnish the benefits of the Workmen's Compensation Act to any person in such group, that such expenditure should be reimbursed in full to the state by the federal government.

The second group under question No. 2 are not qualified. Your letter states that they will be paid in the same manner as the public assistance recipients, but it is important to observe that they are not employees but merely trainees, and as such may possibly be apprentices but not employees. Consequently, even though students are hired by the University as employees, to do specific work, we do not think the relationship is similar here, inasmuch as trainees or apprentices are exempt from the Workmen's Compensation Plan.

In conclusion, the answer to question No. 1 is "Yes", while the answer to question No. 2 in view of the above mentioned material is "No".