

**OPINION
45-310**

June 20, 1946 (OPINION)

WORKMEN'S COMPENSATION

RE: Who Entitled During Time of Illness

This office is in receipt of your letter of June 19, 1946, in which you say;

On the 12th day of February, 1946 I was involved in an auto accident which placed me in the hospital and kept me from my office to the 1st day of June, 1946.

During all this time I was not officially removed from office nor was I relieved of the official responsibility of said office.

However I was deprived of the salary to said office for a period of three months, namely the months of March, April and May.

My contention is that under these circumstances I am legally entitled to receive the salary appropriated especially for said office. . . . "

The facts referred to in your letter are, if I am correctly informed as follows:

On the 12th day of February, 1946, you were very seriously injured in an automobile accident. your injuries necessitated a considerable period of hospitalization, and subsequent convalescence at your home. During that time you were, of course, unable to be present personally in the office of the motor vehicle registrar, although by telephone and by mail you attended to certain matters pertaining to the administration of your office. Shortly after the accident, in which you sustained the injuries mentioned, Mr. NO.O. Jones, the state highway commissioner, appointed a clerk in the office of the motor vehicle registrar to function as "acting registrar". There was no attempt to displace you as the regularly appointed registrar of the motor vehicle registration department, and Mr. Jones never entertained any notion or intention to do so. His action in appointing a clerk in that department to act in your behalf during your convalescence was motivated entirely by his recognition of the necessity for the designation of someone vested with the authority to act officially for you as registrar during your absence from the office. In my opinion, the "acting registrar" acted, in effect, as your deputy.

The state motor vehicle registration department of which you are the registrar, as well as the highway patrol, are divisions of the state highway department and the efficient and proper performance of the functions of those offices is primarily the responsibility of the state highway commissioner.

The motor vehicle registrar is an appointive officer who serves for a term of two years unless removed for cause. Section 39-0201 of the 1943 Revised Code provides:

The commissioner shall appoint a suitable person as registrar of motor vehicles. The registrar shall serve for a term of two years and until his successor is appointed and qualified, but he may be removed at any time for cause. He shall qualify by taking the oath prescribed for civil officers and shall furnish a bond in the penal sum of twenty thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers. If such bond is furnished by a surety other than the state bonding fund, it shall be approved as to form and sufficiency by the commissioner."

Since the motor vehicle registrar is an officer appointed for a definite term, his salary, fixed by law, (section 16, chapter 264, laws 1945), is an incident to the title to the office and not to the exercise of the functions of the office. Hence, the fact that you were not able, on account of your injuries, to perform the duties of the office during the period of your hospitalization and convalescence did not, and does not, in my opinion, deprive you of the right to the compensation fixed by law. (46 Corpus Juris, sec. 233, p. 1015, and numerous cases cited under "30")

The rule with reference to the salary of an office appointed or elected for a definite term, who has not abandoned the office, and who has not been regularly and legally removed therefrom, is stated in 43 Am. Jurisprudence, sec. 342, p. 136, as follows:

Compensation does not constitute any part of the public office to which it is annexed. It is a mere incident to the lawful title or right to the office, and belongs to the officer as long as he holds the office. When an office with a fixed salary has been created, and a person duly elected or appointed to it has qualified and enters upon the discharge of his duties, he is entitled, during his incumbency, to be paid the salary, fees, or emoluments provided by law. The public body cannot by direct or indirect course of action deprive such incumbent of the right to receive the emoluments and perquisites which the law attaches to the office, and effect will not be given to any attempt to deprive him of the right thereto, whether it is by unauthorized agreement, by condition, or otherwise, or by a wrongful removal or suspension.. . . "

I am advised that the workmen's compensation bureau has paid your hospital and medical expenses as a state employee insured by that office. I am also informed that the workmen's compensation bureau has issued checks representing the part of the salary to which an insured injured employee is ordinarily entitled. In view of the fact, however, that you were, and are, entitled to receive the salary prescribed by law, it is my opinion that the workmen's compensation bureau should be fully reimbursed for any amount paid to you in lieu of your salary. If the bureau's checks have not been cashed by you, I suggest that you return them with a copy of this letter.

NELS G. JOHNSON

Attorney General