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WORKMEN'S COMPENSATION ACT: Effect of unconstitutionality of the classification of farm employer within the Workmen's Compensation Act.

CONSTITUTIONAL LAW: Effect of unconstitutional statute.

The Supreme Court decision declaring section of Workmen's Compensation Act unconstitutional is to be retroactively applied in those situations where a claimant is not precluded from proceeding by reason of the filing time limitations found in the Workmen's Compensation Act and in those situations where the doctrine of res judicata is not applicable.

Opinion No. 4796 October 22, 1973.

Charles O. Zollar
State Senator
State Capitol
Lansing, Michigan

In his letter to you, which you forwarded to me with your opinion request, Mr. Ernest C. Fackler, the Director of the Bureau of Workmen's Compensation, states:

> "The Supreme Court in the case of *Mary Gutierrez and Frank Gallegos vs. Glaser Crandell Company*[1] issued by the Court on 12-21-72 held that the classification of farm employer within the Workmen's Compensation Law was unconstitutional. Is the state agency charged with the responsibility of administering the law to apply this decision prospectively, retrospectively or at some other given date prior to December 21, 1972?"

In OAG, 1967-1968, No 4628, p 217 (March 25, 1968), I had occasion to rule on the retroactive effect of a Michigan Supreme Court decision which held the then existing section 27(m) of the Michigan Employment Security Act[2] unconstitutional. Since the problem outlined in Mr. Fackler's letter to you is similar to that dealt with in OAG, 1967-1968, No 4628, that opinion is relevant. In that opinion I concluded that the principle of absolute retroactive invalidity of an unconstitutional statute cannot be justified and that the doctrine of *res judicata* is applicable to Michigan Employment Security Commission final determinations and redeterminations, referee and appeal board decisions and to judgments.

In *Willis* v *Michigan Standard Alloy Casting*, 367 Mich 140 (1962), a claim for interest on an award of workmen's compensation was made after the period for taking an appeal had expired and before the Court issued a decision in another and unrelated case allowing interest on such awards, prospectively, In denying the claim for interest the Court, in *Willis*, held at p 142 that:

> "* * * the doctrine of *res judicata* applies to workmen's compensation claims before the department. * * *"

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[1] *Gallegos* v *Glaser Crandell Co*, 388 Mich 654 (1972)
[2] MCLA 421.1 *et seq.*; MSA 17.501 *et seq.*

Further, in *Standard Automotive Parts Co* v *Employment Security Commission,* 3 Mich App 561 (1966), the Court of Appeals cited 42 Am Jur, Public Administrative Law, § 161, p 570 and stated as follows:

> "In general, the answer given by the courts to the question whether decisions of administrative tribunals are capable of being *res judicata* depends upon the nature of the administrative action involved. The doctrine of *res judicata* has been applied to administrative action that is characterized by the courts as 'judicial' or 'quasi judicial', while to administrative determinations of 'administrative', 'executive', or 'legislative' nature, the rules of *res judicata* have been held to be inapplicable."

Since proceedings under the Workmen's Compensation Act[3] can finally decide statutory rights and duties they are functions which are quasi-judicial in their legal consequences and effects, and as a result the doctrine of *res judicata* is applicable to them. Thus, if a claim for workmen's compensation has finally been disposed of in accordance with the principle enunciated in *Willis* and *Standard Automotive Parts Co,* then *Gallegos* v *Glaser Crandell Co, supra,* would not control.

If, however, the claim has not been finally adjudicated, then the Workmen's Compensation Act must be examined to determine whether the provisions of said Act preclude the claimant from pursuing his claim.

In *Cipriano* v *City of Houma,* 395 US 701, 89 S Ct 1897, 23 L Ed 2d 647 (1969), the United States Supreme Court has further limited the retroactive effect of its decision which held a state statute unconstitutional by requiring that the finality provisions of state law be recognized. In *Cipriano,* suit was brought in an attempt to declare unconstitutional a Louisiana statute limiting the franchise in certain elections to property taxpayers. The U. S. Supreme Court held the statute unconstitutional. At p 706 the Court said:

> "Significant hardships would be imposed on cities, bondholders, and others connected with municipal utilities if our decision today were given full retroactive effect. * * * That is, we will apply it only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision. Of course, our decision will not affect the validity of securities which have been sold or issued prior to this decision and pursuant to such final authorization."

It should be further noted that the concept of finality was specifically dealt with by OAG, 1967-1968, No 4628, p 222 (March 25, 1968), cited above:

> "* * * the Act contains definite finality provisions which preclude the reopening of decisions, determinations and redeterminations beyond a specified period after their issuance."

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[3] MCLA 418.101 *et seq.;* MSA 17.237(101) *et seq.*

Similarly, the retroactive effect of the decision in *Gallegos* is circumscribed by the filing limitation of the Workmen's Compensation Act, MCLA 418.381; MSA 17.237(381), which provides in pertinent part as follows:

> "Sec. 381. (1) No preceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury has been given to the employer within 3 months after the happening thereof and unless the claim for compensation with respect to the injury, which claim may be either oral or in writing, has been made within 6 months after the occurrence of the same; or in case of the death of the employee, within 12 months after death; or in the event of his physical or mental incapacity, within the first 6 months during which the injured employee is not physically or mentally incapacitated from making a claim. In a case in which the employer has been given notice of the injury, or has notice or knowledge of the same within 3 months after the happening thereof, but the actual injury, disability or incapacity does not develop or make itself apparent within 6 months after the happening of the injury, but does develop and make itself apparent at some date subsequent to 6 months after the happening of the same, claim for compensation may be made within 3 months after the actual injury, disability or incapacity develops or makes itself apparent to the injured employee, but no such claim shall be valid or effectual for any purpose unless made within 3 years from the date the personal injury was sustained. Any time during which an injured employee shall be prevented by reason of his physical or mental incapacity from making a claim shall not be construed to be any part of the 6 months' limitation mentioned in this section. In a case in which the employer has been given notice of the happening of the injury or has notice or knowledge of the happening of the accident within 3 months after the happening of the same, and fails, neglects or refuses to report the injury to the bureau as required by the provisions of this act, the statute of limitations shall not run against the claim of the injured employee or his dependents, or in favor of the employer or his insurer, until a report of the injury has been filed with the bureau."

In view of the foregoing, and particularly having in mind *Cipriano*, *Gallegos* is to be retroactively applied in those situations where a claimant is not precluded from proceeding by reason of the filing time limitations found in the Workmen's Compensation Act, and in those situations where the claim for workmen's compensation has not been finally disposed of in accordance with the principle enunciated in *Willis* and *Standard Automotive Parts Co.*

FRANK J. KELLEY,
Attorney General.