

Memo to: Joseph Allen, Esquire
City Solicitor

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August 25, 1966

The questions then presented are whether or not the prisoners in this case have:

- (1) A relationship of master and servant with the City; and are
- (2) Workmen for wages.

In order for the provisions of the Workmen's Compensation Act to be applicable in any given case, the relationship of employer and employee must exist and the rules for the determining the same are the rules at common law for determining the relationship of master and servant. Sun Cab Company vs. Powell, 196 Md. 572, 577.

In a number of cases, the Maryland Court of Appeals has discussed the criteria to be used in establishing the relationship of master and servant.

This phase of the law was involved in the case of L&S Company vs. State Accident Fund, 221 Md. 51, and on page 57 the Court said:

"Several criteria have been developed for use in applying the general rule. The Sun Cab case lists these four: (1) the selection and engagement of the servant; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control of the servant's conduct (196 Md. 577-578). Keitz v. National Paving & Contracting Co., supra (214 Md. at 491) adds a fifth test to those just stated, which is '(5) * * * whether the work is a part of the regular business of the employer.' The Keitz case then goes on to state that none of these indicia, excepting the fourth, standing alone, seems controlling. The Sun Cab case recognizes that the power to hire and discharge is not necessarily vested in the person having control. The Keitz opinion also points