

April 15, 1965 (OPINION)

Mr. Owen T. Owen

Chairman

Workmen's Compensation Bureau

RE: Workmen's Compensation - Nonresidents - Coverage

This is in response to your letter in which you ask for an opinion on the following facts.

A Minnesota resident and employer engages Minnesota resident employees in the home office which is also located in Minnesota. The employment involves a milk route in the State of North Dakota. The employees drive trucks into North Dakota, pick up milk and then return to Minnesota where the milk is unloaded at the home office. No milk is picked up in Minnesota. The ratio of the work performed by the employees in Minnesota and North Dakota is one to three, or seventy-five percent in North Dakota and twenty-five percent in Minnesota.

The employer has coverage for his employees with the North Dakota Workmen's Compensation Bureau. The portion of the payroll reported to North Dakota is \$2,700.00 per year. You then ask whether or not the employees in question are covered by the North Dakota Workmen's Compensation Act if they should be injured in the State of Minnesota in course of employment.

As is material here, section 65-08-01 of the North Dakota Century Code provides as follows:

EXTRATERRITORIAL COVERAGE, WHEN AND HOW FURNISHED.

Compensation shall be paid on account of injuries occurring outside this state or because of death due to an injury occurring outside of this state only when:

* * * *

2. The employee sustains an injury beyond the borders of this state in a service which is incidental to and is referable to the principal employment, the situs of which is within North Dakota;
3. The employer and the bureau previously shall have contracted for insurance protection for employees while working outside of this state in the employment in which the injury occurred, which employment is not incidental to or referable to the principal employment the localization and situs of which is not in North Dakota."

The provisions of subsection 2 contemplate that the situs of employment be located in the State of North Dakota and that the services of the employee in another state are merely incidental to

the regular employment. Consequently, this subsection has no application.

The provisions of subsection 3 contemplate a situation where a North Dakota employer is temporarily engaged in a business or enterprise in another state to the extent that the business or enterprise acquires a situs or localization in the other state and permits an employer to secure workmen's compensation coverage from North Dakota for his employees. This subsection cannot be used to provide workmen's compensation coverage to a nonresident employer in another state. This subsection has no application.

Section 65-01-05 of the North Dakota Century Code makes it unlawful for anyone to employ anyone or receive the fruits of labor without first obtaining the necessary workmen's compensation coverage from the North Dakota Workmen's Compensation Bureau. The North Dakota Workmen's Compensation Act is a monopolistic, compulsory act. Thus, under the facts submitted for consideration it would appear that the Minnesota employer would be required to secure workmen's compensation coverage for his employees except as the provisions of section 65-08-02 might apply. This section pertains to the reciprocal provisions in giving extraterritorial application of workmen's compensation coverage afforded under other states, conditioned on the proposition that the other state has a similar provision in its statutes.

The reciprocal provisions of the various states, including the provisions of the North Dakota Act, leave much to be desired. Invariably the courts have held that the law of the situs of injury control. Some courts have held in the absence of specific statutory provisions that the law of the situs of the contract prevail. Other courts have given recognition to the reciprocal provisions and allowed the injured employee to recover the difference between the benefits allowed under the state in which the injury occurred and the benefits allowed by the state of residence of the employee and the situs of employment, (which also includes the situs of the contract), where the benefits in the residence state were greater than the benefits of the state of injury.

As a result of these various decisions by the courts, an employer and his employee can be adequately protected only where workmen's compensation coverage has been secured which is in full force and effect in the different states if the employment requires the employee to be in more than one state. As a result of this, a division of payroll has been resorted to for purposes of determining the premium to be paid under each jurisdiction, (state). The division of payroll invariably is based upon the time spent by the employee or employees in one jurisdiction or another, or upon exposure of risk. In the facts submitted you do not disclose the total payroll of the employees or the number of employees involved. As a result of this we cannot advise whether the payroll of \$2,700.00 per year is comparable to the time spent in North Dakota.

The Minnesota Court gave only partial recognition to the North Dakota Act and allowed a Minnesota injured employee who was injured in the State of North Dakota to recover the difference between the benefits under the Workmen's Compensation Act of this state and the benefits

allowed under the Minnesota Act. While death benefits consistently have been greater under the North Dakota Act, other type injuries provided greater benefits under the Minnesota Act.

In direct response to your question, it is our opinion that the coverage secured by the Minnesota employer applies only to those employees who are engaged in the course of employment in the State of North Dakota. Thus, the answer to the question is that the North Dakota Workmen's Compensation Act, cannot provide coverage for a Minnesota employer engaged in a business or enterprise, the situs of which is located in Minnesota, under which he employs Minnesota employees. Even if coverage were furnished it is extremely doubtful that the Minnesota employees would be bound by same. They could still demand and receive benefits under Minnesota law.

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