

**OPINION  
66-237**

August 30, 1966 (OPINION)

Mr. James R. Kittle

Director

State Park Service

RE: State - Park Service - Unemployment Insurance

This is in response to your letter in which you state that the North Dakota Park Service desires to obtain unemployment insurance for the staff and construction workers at the Lewis and Clark Job Corps Conservation Center. It is proposed that all Lewis and Clark Job Corps staff members and construction personnel be included in the unemployment insurance program. All of the employees concerned are State employees. You also submit a portion of a subcontract under Contract No. 747 with the Office of Economic Opportunity which would allow such participation. The material part of the Contract, OEO-747, Part XXI, Indirect Costs, states as follows:

'The only indirect costs allowable and reimbursable by the Government shall be State employee salary-related benefits, e.g., retirement, F.I.C.A., insurance, etc. applicable to the Conservation Center staff personnel. This part may be reopened for negotiations each option period at the request of either party.'

You also submit for our consideration a portion of the Contracting Officer's Letter No. 7, which as is material here states as follows:

'Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holiday, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.'

Also submitted for consideration is a letter dated August 9, 1966, written by Mr. Paul W. Eslinger, Administration Officer to Mr. James R. Kittle, Director, to which are attached a voucher and a proposed Employer's Contribution Report.

You then request an opinion with regard to the legality of the State Agency paying salary-related fringe benefits, specifically such as unemployment compensation, contributions for unemployment insurance for employees of the Lewis and Clark Job Corps Conservation Center under Contract No. 747.

Subdivision "g." of subsection 15 of section 52-01-01 of the North Dakota Century Code provides as follows:

15. "'Employment' shall not include:

\* \* \*

- g. Service performed in the employ of this state or of any other state, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is owned wholly by this state or by any one or more states or political subdivisions, and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the constitution of the United States from the tax imposed by section 3301 of the Federal Internal Revenue Code;\*  
\* \* ."

This provision, in effect, excludes employees of the State or its political subdivisions from participation in the Unemployment Compensation Act; however, section 52-05-03 permits election of coverage for employees under certain conditions. This section provides as follows:

52-05-03. EMPLOYMENT NOT INCLUDED WITHIN TITLE MAY BE DEEMED SUBJECT TO PROVISIONS OF TITLE. Any employing unit for which services are performed that do not constitute employment as defined in this title may file with the bureau a written election that all such services with respect to which payments are not required under an employment security law of any other state or of the federal government, and which are performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all the purposes of this title for not less than two calendar years. Upon the written approval of such election by the bureau, such services shall be deemed to constitute employment subject to the provisions of this title from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if during January of such year such employing unit has filed with the bureau a written notice to that effect. The bureau in its discretion may on its own motion terminate any election agreement under this section upon thirty days' notice to the employer. The rate of contribution for employment covered by an election under this section shall be seven percent of the wages paid after 1959, unless the employer qualifies for a rate of contribution of less than the standard rate, as provided in chapter 52-04."

It is observed that those persons who are in employment which is excluded from the Act may be covered if the employing unit makes written application for coverage for all of its employees. Such written application must be approved in writing by the Bureau and such employing unit will then be considered as being within the Unemployment Compensation Act for at least a two-year period from the date stated in the approval. The employing unit is considered a "covered" unit until it files a notice to the contrary during the

month of January two years subsequent to the election of coverage. It is also observed that this section requires that the employing unit must be one which has a distinct establishment or place of business. It further provides that all of its employees must be covered.

The North Dakota Park Service under the provisions of Chapter 55-08, as amended, of the North Dakota Century Code, has various duties, functions and powers. In reviewing the general provisions as pertaining to the Park Service, it is noted that they have general powers and duties over most State Park facilities and related activities. It is observed that the Legislature in a number of instances treats certain parks separately from others, which would indicate that certain parks can be for certain purposes delineated from other parks.

The Lewis and Clark Job Corps Conservation Center can be treated as a separate program, having a distinct establishment or place of business as such terms are used in section 52-05-03.

It is therefore our opinion that the Lewis and Clark Job Corps Conservation Center can participate in the Unemployment Compensation Act by coming within the provisions of section 52-05-03 of the North Dakota Century Code. It is our further opinion that the conditions and limitations of the Unemployment Compensation Act would, however, apply as to the employees and any benefits resulting therefrom.

HELGI JOHANNESON

Attorney General