

**OPINION
45-315**

April 19, 1945 (OPINION)

WORKMEN'S COMPENSATION

RE: Rates - Overtime

We have your letter of recent date, requesting an opinion of this office on House Bill 44 passed by the recent Legislative Assembly.

Section 1 of House Bill 44 provides as follows:

Each employer subject to the provisions of this title shall pay into the fund annually the amount of premium determined and fixed by the bureau for the employment or occupation of such employer, which amount shall be determined by the classifications, rules, and rates made and published by the bureau and shall be based on a proportion of the annual expenditure of money by such employer for the service of persons subject to the provisions of this title, but such annual expenditure of money shall not include bonuses or increased payments for overtime."

Your specific question refers to the following language: "but such annual expenditure of money shall not include bonuses or increased payments for overtime." That is, what construction should be placed upon the phrase, "bonuses or increased payments for overtime?"

We believe, and so hold, that it was the intention of the framers of the bill and the Legislature that the words "increased payments" should mean the additional amount paid the employee for overtime. That is, if the basic salary was one dollar per hour and the employee worked four hours overtime, for which he received \$1.50 per hour, the employer would be required to report the dollar for the entire time worked and pay a premium thereon, but he would not be charged a premium on the extra fifty cents for the overtime.

We must assume that the Legislature in enacting this amendment was mindful of the fact that the Workmen's Compensation Act makes it compulsory for all employers within the state to comply with its provisions. We must also assume that the Legislature was aware that in the enforcement of the workmen's compensation law, employees are classified and that premiums are fixed as to each classification, dependent on the hazards to such classification, determined by experience, and that each classification is self-supporting. We cannot assume that the Legislature in enacting House Bill 44 intended or desired a result that would bring about inequality among the employers of the state.

Therefore, we believe that the framers of the bill and the Legislature intended that the word "bonus" should mean a certain sum of money paid by an employer to the employee for extra or overtime services, in addition to the sum to which the employee was entitled under his contract of employment. A bonus may also be defined as a gratuitous gift given to an employee in addition to his regular salary in appreciation of services efficiently rendered.

If any other meaning is given to the word "bonus" in House Bill 44, it would permit certain employers to fix a low salary or wage for their employees and call a part of it a bonus and thereby evade the payment of their share of the contribution to the workmen's compensation fund, which would result in the disruption of the rate structure and would work an injustice on a majority of the employers of the State of North Dakota, in that it would result in an increase in the premium rates for a majority of the employers.

It is therefore our opinion that the terms "increased payments" and "bonus", referred to in House Bill No. 44, have reference to payments made for overtime services or as gifts in addition to the regular salary of the employee.

NELS G. JOHNSON
Attorney General