

**OPINION
68-351**

April 1, 1968 (OPINION)

Mrs. Agnes Geelan, Chairman

Workmen's Compensation Bureau

RE: Workmens Compensation - Corporations - Coverage of Board of Dire

Your request for an opinion dated March 22, 1968, reads as follows:

A question has arisen with respect to providing workmen's compensation coverage for members of the board of directors of a corporation. Two situations are involved regarding such members. The first would involve a member of the board whose only contact with the corporation would be during meetings of the board, including travel to and from such meetings. The second thing involves a member of the board occasionally helping in the business of the corporation, either with or without remuneration for such help.

Would you please give your opinion as to whether or not the bureau can provide workmen's compensation coverage for such members of a board of directors. If such coverage can be provided by the bureau, would the members of the board of directors be considered as employees?"

All employees carrying on hazardous employment as defined in section 65-01-02 of the North Dakota Century Code must carry workmen's compensation insurance. Section 65-04-29 of the North Dakota Century Code provides voluntary workmen's compensation coverage for those employers carrying on nonhazardous employment and reads as follows:

Any employer carrying on any employment not classed as hazardous under the definition of that term contained in section 65-01-02 who complies with the provisions of this title and who shall pay into the fund the premiums provided for under this chapter shall be covered under the fund and shall not be liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under workmen's compensation insurance may do so by notifying the workmen's compensation bureau and the employer of such election in writing."

Therefore, the bureau may provide workmen's compensation coverage to any person classified as an employee. Whether or not an individual is an employee of a person, firm, association or corporation is a question of fact which must be determined with each particular fact situation. However, as to executive officers of a business concern the law is quite clear. Section 65-01-02(5)(b)(3) of the North Dakota Century Code provides as follows:

"5. 'Employee' shall mean every person engaged in a hazardous employment under any appointment, contract of hire, or

apprenticeship express or implied, oral or written, and:

* * *

b. Such term shall not include:

* * *

- (3) Any executive officer of a business concern shall mean only the president, vice-presidents, secretary, or treasurer of a business corporation whose duties are solely those of such executive office, and if an executive officer also performs duties of a kind generally performed by an employee, such employment is not exempt;

* * *."

A member of the board of directors for a corporation whose only contract with the corporation is during the meetings of the board and he does nothing further in the line of employment for the corporation could not be considered an employee of that organization. See: Words and Phrases, Permanent Volume 14, page 735, and 58 Am. Jur., page 678. If a member of the board of directors performs services for the corporation outside his duties as a director and in return for financial consideration, he may be considered an employee for purposes of workmen's compensation coverage depending upon the surrounding facts. See 99 C.J.S. Workmen's Compensation Sec. 82, page 301.

Chapter 65-07 of the North Dakota Century Code provides for employer's workmen's compensation coverage. However, the board of directors of a corporation are neither employers nor employees. They are officers of that organization and the corporation is the employer. See: 19 Am. Jur. 2d. P. 526. Therefore the directors of a corporation could not obtain workmen's compensation coverage through the provisions of chapter 65-07 unless the board is considered the employer. Whether or not the directors can be covered as employers depends to a great degree upon how active the directors are in controlling the corporation.

It is our opinion that the bureau may provide workmen's compensation coverage for those members of the board of directors of a corporation who, because of their work with the corporation, could be considered its employees. Those members of the board of directors whose only contact with the corporation is during meetings of the board, including travel to and from the meetings, could not be covered by workmen's compensation either as employees or employers.

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