

OPINION
64-276

February 20, 1964 (OPINION)

WORKMEN'S COMPENSATION BUREAU

RE: Employee's Coverage

This is in response to a letter from your attorney in which an opinion is asked for on the following:

An employer is covered relative to his business place in Fargo, North Dakota, which is a service station. He has coverage for his employees and he has also applied for and received coverage for himself under the provisions of chapter 65-07 of the North Dakota Century Code.

This employer has now purchased a service station in Moorhead, Minnesota. The employees at this station live and work in Moorhead, Minnesota. The employees at the Fargo station live and work in Fargo, North Dakota. The employer divides his time about equally between and at the two stations.

Question No. 1. Does the employer's coverage for this employer which as issued relative to his Fargo, North Dakota, station cover him if he should injured while working in Moorhead, Minnesota, at that service station?

Question No. 2. If he is not so covered, can he apply under the North Dakota Workmen's Compensation Act for employer's coverage relative to his work at the Moorhead, Minnesota, service station?"

In answering the above questions we must take into consideration the provisions of section 65-07-01 of the North Dakota Century Code, which provides as follows:

EMPLOYER MAY SECURE COVERAGE FOR HIMSELF. Any employer, by special contract with the bureau, may secure insurance protection against injuries to his own person or for his own death when such injury or death occurs in the course of his work in an industry in which he has secured such protection against injuries to his employees."

You will note that this section, amongst other things, provides that the employer must have secured protection against injuries to his employees. Other than the protection afforded under chapter 65-08, the employees covered under the North Dakota Workmen's Compensation Act are those who are employed in the State of North Dakota or where the situs of the employment is within North Dakota. Even though extraterritorial coverage is afforded to such employees, it is available only where the services beyond the geographical confines of the State of North Dakota are incidental to and referable to the principal employment, the situs of which is in North Dakota.

It thus appears that the persons employed at the service station located in Fargo, North Dakota, must be covered and extraterritorial coverage can be made available beyond the confines of the State of North Dakota if the service beyond the confines of the state are incidental and referable to the principal employment, which in this instance is the service station in Fargo, North Dakota. The coverage available to the employer is to the same extent as to his employees. Therefore, the coverage available for the employer would be only in connection with the service station operated in Fargo, North Dakota. Case law on this question is of little or no value since the question must be resolved strictly on the North Dakota statutes.

In response to your first question, it is our opinion that if the employer has secured extraterritorial coverage and has secured coverage for himself, the employer will have coverage for services rendered in connection with the service station at Fargo, North Dakota, but he would not be covered for any services performed while working in the service station at Moorhead, Minnesota.

In response to your second question, under the present statutes it is our opinion that the employer cannot acquire employer's coverage under the North Dakota Workmen's Compensation Act for any services performed at the service station located in Moorhead, Minnesota.

We wish to further advise that if the employer reported his entire payroll on himself from both service stations - North Dakota and Minnesota - to the Workmen's Compensation Bureau and paid premium thereon, the Bureau would be in sense estopped from denying coverage should he have sustained an injury during such time. This conclusion is based on equity and not on statutory law.

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