

**OPINION
64-442**

September 25, 1964 (OPINION)

Mr. Martin N. Gronvold

Director

Unemployment Compensation Bureau

RE: Unemployment Compensation - Employment - Definition

This is in response to your letter in which you call attention to section 52-06-02 of the North Dakota Century Code, as amended, which provides as follows:

DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

1. For the week in which he has filed an otherwise valid claim for benefits after he has left his last employment voluntarily without good cause, and thereafter until such time as he:
 - (a) Can demonstrate that he has earned remuneration for personal services in employment equivalent to at least ten times his weekly benefit amount as determined under section 52-06-04; and
 - (b) Has not left his last work under disqualifying circumstances.

* * * * "

You also call our attention to the term "employment" and that it is defined in section 52-01-01, subsection 13 of the North Dakota Century Code. You then ask for an opinion as to the meaning of the term "employment" as found in section 52-06-02. More specifically, you want an opinion as to whether or not the term "employment" as used in section 52-06-02 has a meaning other than as defined in section 52-01-01, subsection 13 of the North Dakota Century Code.

The Unemployment Act was initially adopted by the North Dakota Legislature by enacting Chapter 232 in the 1937 Legislature. In adopting the Act the Legislature defined a number of terms, including the term "employment." It also defined what does not constitute "employment." Since then the Legislature has from time to time amended or added additional definitions pertaining to the Unemployment Compensation Act.

We must assume that the Legislature was fully cognizant of having defined certain terms and that the terms were defined for various specific reasons. One of such reasons was to assure that the terms used in the Act would have a specific meaning at all times and to

eliminate any doubt as to what the specific intent of the Legislature was in enacting certain provisions of the Act. The same purpose must be ascribed to subsequent amendments.

As to the term "employment" the same is defined in section 52-01-01, subsection 13 of the North Dakota Century Code and contains, amongst other things, the following provisions:

DEFINITIONS. In this title, unless the context or subject matter otherwise requires: * * * *."

(Then follow the various statutory definitions of terms.)

The term title embraces all of chapters 52-01 through 52-10. The Unemployment Compensation Act upon codification of the North Dakota Code was divided into chapters and is now found in chapters 52-01 through 52-06. It is significant to note that certain terms within the chapters are occasionally defined for purposes of giving a special meaning to the words used in the chapter. We here are not confronted with this particular situation in this instance.

It is not necessary to recite the statutory definition of "employment." It is sufficient to note that the Legislature has defined such term and has stated that such term shall have the defined meaning whenever used in the title, unless the context or subject matter otherwise requires. That the Legislature was concerned in giving a specific meaning to certain terms is further illustrated by the fact that the Legislature also set forth what is not to be included in the term "employment." The Legislature enacted subsection 15 to section 52-01-01 and set forth in detail what shall not be included in the term "employment." All of this illustrates that the Legislature had a specific purpose in mind in giving a certain meaning to certain terms. We might say that the Legislature was aware that this type of legislation by the very nature of the subject matter required the use of certain terms, the meanings of which were somewhat obscure and varied under the common law concept of such terms.

The term "employment" is found in a provision setting forth what constitutes disqualification for benefits. It is significant to note that the term "employment" is used in subsection 1, for example, "* * * * left his last employment voluntarily." The term again is used in subdivision a of subsection 1, as follows: "services in employment." By the very nature of the Act the term "employment" as used in subsection 1 must necessarily conform to the statutory definition of such term. It is highly improbable that the Legislature would use the term "employment" more than once in the same subsection and intend that the meaning of the term should be different in each instance. The strong presumption is that the term meant the same thing in each instance. If the Legislature had intended to convey a different thought it could have, and most likely would have used another term such as "personal service" or "labor", but it chose to use the term "employment."

It is also significant to note that the benefits are paid from the funds derived from taxes imposed upon employers based upon salaries paid to the employees in their employment. While the Legislature

could do so, it is very unlikely that it would first provide for a disqualification and then permit the person so disqualified to remedy the disqualification outside the scope of the Unemployment Act where no contributions of any kind would inure to the maintenance of the unemployment compensation fund from which benefits are paid. If such were permitted it would be incongruous with the entire purpose and structure of the Unemployment Compensation Act.

82 C.J.S. Statutes Section 315, page 536 states that: "The legislature may define certain words used in a statute or declare in the body of the act the construction to be placed thereon and the court is bound by such definition or construction and will apply it in accordance with the judicial decisions on the question without enlarging or diminishing the meaning provided by the statute, although otherwise the language would have been construed to mean a thing different from that contemplated by such statutory definition or rule of construction." This statement is followed by a rather impressive list of citations.

The California Supreme Court in *Cherberg Products v. California Employment Commission*, 153 P.2d. 404, held that when the meaning to be given to a particular term is prescribed by the Legislature in enacting a statute, that meaning is binding on the courts. The question involved, amongst other things, was the term "employment." A similar rule was followed by the California Supreme Court in *People v. Western Airlines*, 268 P.2d. 723. This case was appealed to the United States Supreme Court and the appeal was dismissed, (99 L. ed. 677), which in effect affirms the decision of the State Supreme Court. The United States Supreme Court has recognized and followed the same rule. (93 L. ed. 611 and 93 L. ed. 691.) It was interesting to note that the United States Supreme Court refers to statutory definitions as "works of art."

The Supreme Court of Iowa in *Larson v. Fordyce*, 21 N.W.2d. 69, held that where a term is defined in a chapter the Court must assume that the term has the same meaning wherever else it is used in the chapter unless otherwise stated. The same rule of law is stated in 82 C.J.S., page 912.

The North Dakota Supreme Court in *State v. Anderson*, 116 N.W.2d. 623, without referring or discussing the above rules adhered to them and actually decided the case on such rule.

It is therefore our opinion that the term "employment" as found in section 52-06-02 has the same meaning as such term is defined in section 52-01-01, subsection 13, and does not mean those items included under subsection 15 of section 52-01-01 of the North Dakota Century Code, which defines what is not included within the term "employment." The statutory definition of the term "employment" applies to the term of employment as found in section 52-06-02, subsection 1 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General