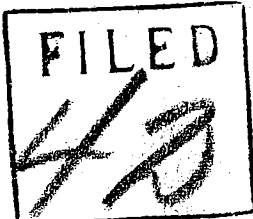
SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN: (1) The receipt of supplemental benefits under the Ford Motor Company or General Motors Corporation Supplemental Unemployment Benefit Plan does not prevent the receipt of state unemployment benefits to an individual while unemployed. (2) The amounts which are set aside to pay supplemental benefits under this plan are not taxable as wages under Section 288.090, RSMo 1955, Supp.



June 21, 1956

Honorable Raymond B. Hopfinger
Member, House of Representatives
5916 Berkeley Drive
Berkeley 21, Missouri

Dear Sir:

This will acknowledge receipt of your opinion request of June 1, 1956, in which you ask the following:

> "We wish to request an official ruling by your office with regard to two questions relating to supplemental benefit plans recently negotiated by the A.A.W. with General Motors Corp. and the Ford Motor Co.
>
> "The questions involved are:
>
> 1. Does the receipt of supplemental benefits under these plans prevent the receipt of state unemployment benefits to an individual while unemployed?
>
> 2. Are the amounts which are set aside to pay supplemental benefits under these plans reportable for unemployment tax purposes?
>
> "As you probably know, these plans are scheduled to become effective as of June 1, 1956. Therefore your earliest possible attention to the matter will be greatly appreciated."

Briefly, the Supplemental Unemployment Benefit Plan (hereinafter referred to as the Plan) may be described as one designed to supplement the state unemployment payments. It contemplates the establishment of a trust fund or funds into which the Company will contribute five cents per employee hour until such time as the Plan is fully funded. Thereafter, only such contributions will be made by the Company as are necessary to maintain the solvency of the fund. The above is the sole obligation of the Company. The expressed purpose of the Plan is to supplement

state unemployment benefits. Beginning June 1, 1956, unemployed workers of the Company will be paid benefits in addition to state unemployment benefits by the trustee of the fund in exchange for certain "credit units" accumulated by such employees while employed by the Company. The rate of exchange will depend on the seniority of the particular employee and the relative value of the assets of the fund. Thusly, when added to the amount of state benefits will total sixty-five per cent of the workers normal after-tax straight time wage for four weeks and sixty per cent thereafter for a total period not to exceed twenty-six weeks, the exact number depending upon the length of employment. The above is qualified to the extent that the worker will receive no payment unless the amount to which he is entitled is at least two dollars and the largest supplemental payment he may receive is twenty-five dollars. It is further provided that in order for a worker to receive a supplemental payment under the Plan with respect to any week he must meet the eligibility of the conditions of the state unemployment compensation system and must have actually received a benefit check under such state system with respect to such week.

The questions immediately arising are those submitted in the opinion request and the solution thereof depends upon the provisions and construction thereof of the state Unemployment Compensation Laws.

The policy of the Missouri Employment Security Law (hereinafter referred to as the "Missouri Act") is set forth in Section 288.020, Cum. Supp. 1955. Said section reads as follows:

> "1. As a guide to the interpretation and application of this law, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals, and welfare of the people of this state resulting in a public calamity. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.
>
> "2. This law shall be liberally construed to accomplish its purpose to promote employment security both by increasing opportunities for

> jobs through the maintenance of a system of public employment offices and by providing for the payment of compensation to individuals in respect to their unemployment."

The features of the Plan appear to be quite in keeping with the afore-mentioned public policy. Certainly such supplemented benefits are no less for the public good and the general welfare of the people of this state when voluntarily provided by contract than when provided by the state by virtue of the statute.

The conditions of eligibility to receive unemployment benefits are set forth in Section 288.040, Cum. Supp. 1955. The only condition under which it is questionable that an individual drawing benefits under the plan might not comply with is set forth in subsection 3 of this section and reads as follows:

> "1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that
>
> * * * * *
>
> "(3) Prior to the first week of a period of total or partial unemployment for which he claims benefits he has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which he claims benefits;"

It is apparent from reading this section that eligibility depends upon a status of unemployment.

"Totally unemployed" is defined in paragraph 24 of Section 288.030, Cum. Supp. 1955, as follows:

> "24. (1) An individual shall be deemed 'totally unemployed' in any week during which he performs no services and with respect to which no wages are payable to him. * * *"

A construction of this paragraph will determine the questions with which we are concerned since said paragraph sets forth the conditions under which an individual shall be deemed unemployed. Notice that these conditions, with respect to any week, are (1) nonperformance of services, and (2) no claim for wages.

The conditions will be treated separately and the opinion will deal first with the term "services."

In defining the term "services", the Washington State Supreme Court in Skrivanich v. Davis, 29 Wn. (2d) 150, at page 161 approved the following definition of services which was adopted by the Supreme Court of Utah in Creameries of America v. Industrial Commission, 98 Utah 571, 102 P. (2d) 300, l.c. 304 of the P. Reporter:

> "Section 19(p) defines 'wages' as 'all remuneration payable for personal services, including commission and bonuses and the cash value of all remuneration payable in any medium other than cash.' The terms 'services' and 'personal service' used in defining 'wages' are not specifically defined in the Act. In ordinary usage the term 'services' has a rather broad and general meaning. It includes generally any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed. The general definition of 'service' as given in Webster's New International Dictionary is 'performance of labor for the benefit of another'; 'Act or instance of helping, or benefiting'. The term 'personal service' indicates that the 'act' done for the benefit of another is done personally by a particular individual."

Looking back for a moment at the Plan, it provides for benefits to eligible unemployed workers as a supplement to state unemployment compensation. Provision is made for a trustee to be custodian of the fund which is composed of contributions at a rate of five cents per hour for which the company has paid its employees. The employer is the sole contributor to the trust fund and the trustee individually administers the fund. The moneys in the fund never revert to the employer, and the employee has no vested right, his right thereto being dependent on the occurrence of a future uncertain event.

In view of the plan itself, and in the light of the language of the Creameries of America Case, supra, it appears that a recipient of benefits under the Plan would be performing no services since there is no employer-employee relationship and, further, because payment is made from a trust fund by a trustee and not from an employer.

The term "wages" is defined in paragraph 25 of Section 288.030, supra, as follows:

> "25. 'Wages' means all remuneration payable or paid, for personal services including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. Vacation pay and holiday pay shall be considered as wages for the week with respect to which it is payable. * * *"

It is obvious from the definition of "wages" that the key word used therein is "remuneration", and that a construction thereof is necessary in determining what are wages. For a construction of the term "remuneration", see the case of Pendleton Unemployment Compensation Case, 167 Pa. Super. Ct. 256, 75 A. (2d) 3, where the Superior Court of Pennsylvania stated, l.c. 5 of the A. Reporter:

> "It is safe to assert that pension payments are not wages within the meaning of the Law, sec. 4 (x), 43 P.S. 753, and that their receipt will not disqualify an employee who meets the other requirements of the Law. Nor are payments made by an employer to a pension fund regarded as wages. Law, sec. 4(x) (2) (A). The purpose of the unemployment legislation is 'the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own': Law, sec. 3, 43 P.S. 752. By it the Legislature seeks to prevent 'the spread of indigency', but an employee need not be indigent to secure the benefits provided by the Law. If he meets the requirement of the Law he is entitled to compensation even though he has other resources and from them receives income adequate for his needs; e.g., interest on saving accounts, mortgages, United States bonds, or rent for real estate owned by him. The purpose of a pension plan is 'to pay additional compensation for services rendered in the past', <u>Kline v. State Employees Retirement Board</u>, 373 Pa. 79, 85, 44 A (2) 267. However, it is not remuneration within sec. 4(u), 43 P.S. 753, since the pensioner performs no service during the period covered by the pension payments."

We are unable to see in view of the above quotation how the receipt of benefits under the Plan can be called "remuneration" since the recipient of such benefits would be performing no services during the period that such benefits are received.

Another case construing the term "remuneration" is Bartholf v. Board of Review, Div. of Employment Security, 36 N. J. Super. 349, where the appellate court of New Jersey stated, l.c. 359:

> "* * * the act places the status of wages only on those monies which represent remuneration for services rendered and which are paid <u>for</u> employment rather than <u>because</u> of employment."

Under the authority of this case, only the consideration paid <u>for</u> employment and not <u>because</u> of employment, constitute wages. Applying such a definition to the term "wages" with reference to "remuneration", the receipt of benefits under the plan would not constitute wages since the benefits would not be paid <u>for</u> employment.

The foregoing conclusion that such benefit payments do not constitute wages necessarily disposes of both questions in the opinion request since, with respect to the second question, the employer is not liable for employment tax except on wages. Insofar as the determination of the second question is concerned, such is further supported by a ruling by the Commissioner of Internal Revenue, 5 C.C.H. P. 52303, Section 6470, that payments received by laid-off employees from a particular company-finance Supplemental Unemployment Benefit Fund Plan are not wages subject to withholding for income or employment tax purposes.

We conclude, then, that a recipient under the Plan would be neither performing services since, the recipient being unemployed, there is no employer-employee relationship and further because benefits are paid by a trustee and not an employer, nor receiving "wages" since "wages" is defined as "remuneration" payable or paid and, as pointed out, "remuneration" is consideration <u>for</u> employment and not <u>because</u> of employment, or stated differently, receipt of such benefits is not remuneration since the recipient performs no services during the period of receipt of such benefits.

CONCLUSION

It is therefore the opinion of this office that:

(1) The receipt of supplemental benefits under the Ford Motor Company or General Motors Corporation Supplemental Unemployment Benefit Plan does not prevent the receipt of state unemployment benefits to an individual while unemployed.

(2) The amounts which are set aside to pay supplemental benefits under this plan are not taxable as wages under Section 288.090, RSMo 1955, Supp.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Harold L. Henry.

Yours very truly,

JOHN M. DALTON
Attorney General

HLH/bi