Workmen's Compensation Law, Elective Measure. Public Corporations, May Elect to Become Bound.

The workmen's compensation law is distinctively an elective measure. Public corporations may elect to become bound by its terms in which event they must submit to the provisions of plan No. 3.

June 29, 1915.

Hon. A. E. Spriggs,
Chairman Industrial Accident Board,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of even date, wherein you inquire whether under the compensation law, it is obligatory upon public corporations to become bound by the provisions of Plan No. 3. Public corporations are defined as follows:

> " 'Public corporation' means the State, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town or village."

Public corporations as thus defined, are included in the term "employer" Section 6 (i) providing:

> " 'Employer' means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special charter and commission form of government, school districts, towns or villages, and independent contractors, and shall include the legal representatives of a deceased employer."

And Section 3 (e) provides in part:

> "Where a public corporation is the employer or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of compensation plan No. 3 shall be exclusive compulsory, and obligatory upon both employer and employee."

This language standing alone would seem to afford no alternative for public corporations, but would seem to indicate by positive expression that they are compelled to submit to the provisions of Plan No. 3. However, Section 3 (f) provides in part:

> "Every employer engaged in the industries, works, occupations or employments in this Act specified as 'hazardous' may * * * elect whether he will be bound by either of the compensation plans mentioned in this Act."

and Section 3 (i) reads as follows:

> "It is the intention of this Act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the Compensation plans herein provided, elect to be so bound thereby, and that the employe shall be presumed to have elected to be the subject to, and bound by, the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this Act."

In view of these expressions of the law, the conclusion is that the Compensation Law is distinctly an elective measure. Public corporations engaging in hazardous employments, do not by operation of law become bound by the provisions of Plan No. 3, but in so far as being bound at all by the law, stand upon equal footing with other employers of labor, with the proviso that if a public corporation elects to become bound by the law, then Plan No. 3 is exclusive and obligatory; while as to other than public corporations anyone of the three plans may be adopted, with this qualification: if an employer of the latter class engages in the performance of contract work for a public corporation other than as casual employment, it is encumbent upon such employer, if he elects to secure the protection afforded by the Compensation Law, to be bound by the provisions of Plan No. 3 as to all hazardous work done in pursuance of such public contract. In such case, if the employer has elected previously some other than Plan No. 3, he may be bound by both the plan he has adopted and Plan No. 3, and contribute to the Industrial Accident Fund a sum equal to the percentage of his total annual pay roll, as provided by Section 40 (a), which payroll contemplates, of course, only the employee engaged by the employer for work upon the public contract, and not the payroll of employees of the employer engaged in non-public work.

Yours very truly,
J. B. POINDEXTER,
Attorney General.