

**Compensation — Workmen's Compensation Act — Pay
Rolls.**

An employee not reported on payroll is not deprived of benefit of Workmen's Compensation Act.

Who is employee is fact question.

J. Burke Clements, Esq.,
Chairman, Industrial Accident Board,
Helena, Montana.

March 1, 1929.

My dear Mr. Clements:

You have requested my opinion whether the board should order compensation paid to Louise Bureson, based on the following set of facts:

"Axel W. Bureson was employed by the Butte Independent Mines Company, of Butte, Montana, as a salesman in a campaign to dispose of the capital stock of the corporation. He was so employed for several months prior to the month of May, 1928. During the month of May, 1928, and prior thereto, the Butte Independent Mines Company was enrolled under plan No. 3 of the Workmen's Compensation Act of Montana. Prior to May 1, 1928, Mr. Bureson was paid by the company in commissions.

"The president of the Butte Independent Mines Company testified under oath at a hearing before the chairman of the Industrial Accident Board that Mr. Bureson worked for the Butte Independent Mines Company as a stock salesman until about the first of May 'when he had a lot of business in Anaconda and we hired Mr. Bureson solely to take care of this business for us, and later he was going to work in the mines'. Mr. Bureson was employed to make collections on stock that had been previously sold, and to look after such other business of this nature as the company had. He was to be paid \$250.00 a month. While going from Anaconda to the home of one of the

company's customers on the Anaconda road on the night of May 28, Mr. Bureson met with an accident in an automobile and was killed.

"For several months previous to the first of May the Butte Independent Mines Company reported its pay roll to the Industrial Accident Board for the purpose of paying its premium in the usual and regular way. None of the office help or the stock salesmen were reported on the pay roll. When Bureson was changed from a commission salesman to a salaried man the Butte Independent Mines Company did not then report Mr. Bureson on the pay roll for the purpose of assessment of the amount of premium due the Industrial Accident Board.

"By affidavit the office manager of the Butte Independent Mines Company states to the Industrial Accident Board that failure to place Mr. Bureson's name on the pay roll report for May, 1928, was an oversight in the office. Up to the present time Mr. Bureson's name has not yet been reported nor has the company reported or paid the premium on the salaries of any other office help."

Section 2847 R.C.M. 1921 provides:

" * * * any employer having any workman engaged in any of the hazardous works or occupations herein listed shall be considered as an employer engaged in hazardous works and occupations as to all his employees."

Under a similar provision of the Illinois compensation act it was held that where a person employed by a printing company (designated as a hazardous occupation) to solicit advertisements and who used his own car, was killed while driving on a public street by colliding with another car, his beneficiary was compensable. (In re Publishing and Printing Co., vs. Industrial Com., 132 N.E. 511).

An employer under the provisions of the compensation act evading contribution to the Industrial Accident Fund does not bar an employee from recovering compensation. (I Honold, 155; City of Butte vs. Industrial Accident Board, 52 Mont. 75).

Sections 3002, 3003, 3004 and 2930 R.C.M. 1921 all clearly indicate that the Industrial Accident Fund is not relieved by the failure of an employer to report all of his pay roll.

Assuming that the statements regarding Mr. Bureson's being placed upon the pay roll, and that he was being paid a salary and not a commission for the work he was engaged in doing at the time of his death, have been established to the satisfaction of the board, it is my opinion that Louise Bureson is entitled to receive compensation.

Very truly yours,

L. A. FOOT,

Attorney General.

By C. N. Davidson, Assistant.