

## No. 190

**MONTANA ARMORY BOARD—EMPLOYEES—MONTANA UNEMPLOYMENT COMPENSATION LAW**

**Held: Employees of Montana Armory Board are not in covered employment and contributions are not due to the fund on wages paid by said Board to its workers and employees.**

July 30, 1941.

Montana Armory Board  
Helena, Montana

Gentlemen:

You ask:

“Are the individuals rendering services for the Montana Armory Board ‘in employment,’ as defined under the Montana Unemployment Compensation Law, so as to require the payment of contributions on their wages—and are such workers entitled to benefits when unemployed?”

The Montana Armory Board was created by Chapter 161 of the Session Laws of Montana, 1939, as amended by Chapter 123, Session Laws of Montana, 1941. The Board is appointed by the Governor and is a board politic and corporate. The purposes “shall be to foster and build state armories in the State of Montana.” The Montana Armory Board is therefore a wholly-owned state instrumentality, since it has no power or authority except such as has been granted to it by the State Legislature. Our Supreme Court in the case of Geboski v. Montana Armory Board, 110 Mont. 487, 492, 103 Pac. (2nd) 679, has held the Armory Board is an instrumentality of the state, and as such its property is exempt from taxation.

The Montana Unemployment Compensation Law, Chapter 137, Session Laws of 1937, amended by Chapter 137, Session Laws of 1939 and amended by Chapter 164, Session Laws of 1941, requires contributions to be made to the fund by all employers. Section 19 (j) (6) (F) provides “employment” shall not include services performed in the employ of this state or of any instrumentality of this state. It was the evident intent of the Legislature employees of the state should not be included in the operations of the law.

Ordinarily employees of the state, particularly those employed in the state offices, are secure in their tenure of office over a considerable period of time. There are only a few instances where state employees are laid off; and, when laid off because of budgetary requirements or cessation of the particular operation, usually notice of such layoff is given sufficiently in advance to permit the employee to secure other work. This particular condition is being changed somewhat because of the fact the state is becoming more and more engaged in what might be termed the usual commercial operations. In highway construction and maintenance, in service

functions for agricultural enterprises, dairying, etc., there are state operations which do have a large amount of turnover in employment. Therefore, the setup of the Armory Board in the construction of armories will result in hiring of workers and in the laying off of workers comparable to private industry. However, since the Legislature has spoken and its intent is clear, such work cannot be considered "in employment."

It is therefore my opinion the services performed by workers for the Montana State Armory Board are not covered employment and contributions are not due to the fund on the wages paid by such Board to its workers and the workers employed are not in covered employment, therefore, not acquiring wage credits for benefit purposes.

Yours very truly,

JOHN W. BONNER  
Attorney General