

Dear Mr. Larson:

You have requested my opinion on the question of whether bonuses and overtime paid by an employer to a workman should be included as part of the employer's payroll for the purpose of computing workmen's compensation premiums under Plan Number 3.

Section 92-1101, Revised Codes of Montana, 1947 provides in part as follows:

"Every employer, subject to the provisions of compensation plan No. 3 shall, in the manner and at times herein specified, pay into the state treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual payroll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows: . . ."

The statute then enumerates twenty-seven different classes of hazardous employment for which the percentage of the total payroll which is to be paid as a premium to the industrial accident fund is varied depending upon the risk involved in the particular type of employment.

Section 92-1121, Revised Codes of Montana, 1947, provides as follows:

"In computing the payroll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this act, shall be included, whether it be in the form of salary, wage, piece-work, or otherwise, and whether payable in money, board or otherwise. Salary and wages paid during actual vacation period shall not be computed or assessed." (Emphasis supplied)

Both of these statutes were part of Chapter 96, Session Laws of 1915, the original workmen's compensation act in Montana. Section 92-1121, supra, was amended in 1947 to add the last sentence thereof, but that amendment does not affect the question under consideration.

Section 92-1121, supra, is by its terms an all-inclusive statute and I think it is clear that the legislative intent was to include every form of compensation paid to a workman in a hazardous occupation for his services, where the

#### Opinion No. 79

##### Workmen's Compensation—Premiums —Bonuses—Over-time Pay

**Held:** An employer insuring under Workmen's Compensation Plan No. 3 must pay a premium based upon a percentage of his total annual payroll as provided by Section 92-1101, Revised Codes of Montana, 1947. The total annual payroll must consist of the entire compensation, including bonuses and over time pay received by every workman employed in a hazardous occupation.

April 25, 1952.

Mr. Baxter Larson, Chairman  
Industrial Accident Board  
Helena, Montana

terms of a statute are plain, unambiguous, direct and certain, the statute speaks for itself; there is naught for courts to construe. *Chmielewska v. Butte & Superior Mining Co.*, 81 Mont. 36, 261 Pac. 616. The maxim of statutory construction of *expressio unius est exclusio alterius* cannot be invoked in favor of including only what is called salary, wages or piece-work, because the legislature added the words "or otherwise." A bonus paid to an employee at regular intervals constitutes a part of his entire compensation and is included within the terms of Section 92-1121, *supra*. To hold otherwise would be to allow some employers to avoid their fair share of the risk to the detriment of the other employers carrying insurance under Workman's Compensation Plan No. 3. Similarly, additional payments to workmen for overtime constitute part of the entire compensation paid to the workmen and thereby fall within the provisions of the statute.

You inform me that one of your predecessors in office issued an administrative interpretation of the act in 1947 and informed employers enrolled under Part 3 that "overtime pay" and "bonuses" need not be included in the total annual pay-roll upon which premiums are to be paid. I quite agree with you that the administrative interpretation of your predecessor is entirely gratuitous and without foundation in the law. Whether these items should properly be included is not for the Board or me to determine, because by the plain terms of the statute the legislature has provided that premiums must be paid on the entire compensation paid to the workman. If a change is desired it must be made by the legislature and not by administrative interpretation.

Therefore, it is my opinion that an employer insuring under Workmen's Compensation Plan No. 3 must pay a premium based upon a percentage of his total annual payroll as provided by Section 92-1101, Revised Codes of Montana, 1947. The total annual payroll must consist of the entire compensation, including bonuses and overtime pay, received by every workman employed in a hazardous occupation.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General