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LABOR:
Agricultural Exemptions From The
Workmen's Compensation Act

Honorable Gale Schisler
Chairman
House Agriculture Committee
Room O-1 State Office Building
Springfield, Illinois 62706

Dear Representative Schisler:

I have your letter wherein you ask the following question concerning the coverage of the Workmen's Compensation Act (Ill. Rev. Stat. 1973, ch. 48, pars. 138.1 *et seq.*) as amended by Public Act 79-79 (Senate Bill 235):

> "Whether or not a farmer might still be subject to the provisions of the Workmen's Compensation Law even though he hires less than 245 man days of labor per calendar year if his employee or employees do in fact work in jobs that could be categorized as extra hazardous within the definition of jobs spelled out under Section Three of the Act as amended?"

Your question seems to assume that whether an employer and employee are covered by the Act under section 3 is determined by the type of job at which the employee does in fact work. That is not the case. Under the Illinois Act, the determination of whether an employer and employee are covered is based on the business or enterprise in which they are engaged and not on the type of work or particular activity that the employee is doing at the time of the injury. (Figgins v. Industrial Comm., 379 Ill. 75; Leszinske v. Grebner, 89 Ill. App. 2d 470.) Although the word "undertaking" is added to "business" and "enterprise" in section 3 of the Act by Public Act 79-79, those cases would presumably still apply; so that the determination would now be based on the "undertaking, enterprise or business" in which the employer and employee are engaged. Hence, the real question is whether the Act applies when an employment is an agricultural employment of less than 245 man days per calendar year but also is an employment of such a nature that it could fall within one of the categories of extra hazardous undertakings, enterprises or businesses.

Section 3 of the Workmen's Compensation Act (Ill. Rev. Stat. 1973, ch. 48, par. 138.3) as amended by Public Act 79-79 sets out a list of extra hazardous undertakings, enterprises or businesses and provides that the Act applies automatically without election to all employers and all their employees engaged in such undertakings, enterprises, or businesses. At the end of the list is the following wording added by Public Act 79-79:

> "Any agriculture enterprise, except that nothing contained in this Act shall be construed to apply to any agricultural employments who employ less than 245 man days of labor during any calendar year exclusive of the employer's spouse and other members of his immediate family residing with him."

The answer to your question depends on whether the exception in the last paragraph of section 3 is an exception only from the inclusion of agriculture enterprises as extra hazardous or is an exception from the other 18 undertakings, enterprises or businesses listed as extra hazardous as well.

The wording of the exception itself seems to indicate that it is an exception from all the extra hazardous undertakings, enterprises or businesses. Rather than simply reading "any

agriculture enterprise except one in which the farmer employer hires less than 245 man days of labor in a calendar year" the exception is worded to state explicitly that "nothing contained in this Act shall be construed to apply to any agricultural employments who employ less than 245 man days of labor during any calendar year". Thus, the wording of the exception itself indicates that it is an exception from everything included by section 3 and not just an exception from the inclusion of agriculture enterprises in the extra hazardous list.

An examination of the list of extra hazardous undertakings, enterprises and businesses also indicates that the exception is from all of the extra hazardous undertakings, enterprises or businesses. If an agricultural employment by a farmer employer of less than 245 man days per calendar year could be brought under this Act by being characterized as an extra hazardous undertaking, enterprise or business, the exception would be virtually useless. Section 3 as amended by Public Act 79-79 includes in the list of the extra hazardous:

> "15. Any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof."

If all agricultural employments where less than 245 man days are employed per calendar year which also involve in the operation thereof use of power driven equipment are brought under the Act, the exception would be almost totally destroyed since even small farms today involve the use of some power driven equipment. In addition, if item 16 of section 3 as amended, which brings within the Act any businesses in which goods are produced and item 17, which brings in any businesses in which goods are sold, apply to farm products, no agricultural employment could escape inclusion. Several of the other extra hazardous undertakings, enterprises or businesses also describe activities which might be engaged in in an agricultural employment. Item 1 includes as extra hazardous the "erection, maintaining, removing, remodeling, altering or demolishing of any structure". Item 2 includes excavating and electrical work. Item 3 includes carriage by land and any loading or unloading connected with it. Item 8 includes "any enterprise in which sharp edged cutting tools, grinders or implements are used * * *." If the exception for agricultural employments were

narrowed by taking these types of undertakings, enterprises and businesses out of the exception and bringing them within the Act, the exception would be virtually destroyed. It is a well known rule of statutory construction that a statute should be construed if possible so that no part is rendered meaningless. (Hirschfield v. Barrett, 40 Ill. 2d 224; People ex rel. Barrett v. Barrett, 31 Ill. 2d 360.) Hence, in order to give the agriculture exception any meaning at all, it must be construed to be an exception from all the extra hazardous undertakings, enterprises and businesses in section 3.

Finally, there is case law under a prior wording of the statute which indicates that the exception is not to be narrowed by excluding extra hazardous activities from it. Prior to Public Act 79-79 section 3 of the Act also contained an agriculture exception although cast in different language than the exception under Public Act 79-79. The question of the scope of the prior exception has been discussed in three cases which merit attention here. In Peterson v. Industrial Commission, 315

Ill. 199, a worker employed to haul logs to and from his employer's sawmill was killed while so hauling logs. The employer claimed exemption from the Act as a farmer since he farmed about 20 of the 100 acres on which the sawmill was located. Part of the lumber from the sawmill was sold to others, however, and the sawmill was also rented to others. The relevant portion of section 3 at that time provided:

> "* * * [N]othing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any of such purposes, or to anyone in their employ or to any work done on a farm or country place, no matter what kind of work or service is being done or rendered." (Smith-Hurd Ill. Rev. Stat. 1923, ch. 48, par. 139.)

The court stated that a person could be engaged in two kinds of business, one exempt and one not exempt from the Act and continued at page 202:

> "It cannot be said that because a man is a farmer that that fact, alone, exempts him from the operation of the Workmen's Compensation act where he engages on his farm in an <u>independent</u> extra hazardous occupation which is within the terms of the act." (emphasis added.)

concluding that the operation of a sawmill as done in this case was "no part of the ordinary business of operating a farm" and that the operation of the sawmill was extra hazardous, the court held the provisions of the Act applicable to this situation.

In Hill v. Industrial Commission, 346 Ill. 392, the court distinguished the Peterson case and held that the Act did not apply. The farmer employer and his employee were hulling clover for another farmer when the employee was injured. The language of the portion of the statute involved was the same as that quoted above in the discussion of the Peterson case. The court pointed out that in Peterson, the sawmill was found not to be a part of the ordinary business of operating a farm but rather a "separate and extra hazardous occupation". (346 Ill. 392, at 394.) (emphasis added.) In the Hill case, the court found that hulling clover was a part of farming and held that the employer and employee were exempt from the Act. The court did not reach the question of whether clover hulling was

extra hazardous since it was part of farming.

In Noverio v. Industrial Commission, 348 Ill. 137, the court followed Hill in holding that a tile repairman and his employee were not covered by the Act because of the farming exception. The employer did patch tiling work on various farms, using spades and shovels and a small hatchet. He and his employee had adjourned to his basement to make screens for use in the patch tiling of a particular farm when the employee was injured. The employee contended that the employment was covered both as a business involving excavating and as a business in which sharp edged cutting tools were used, both of which types of business were declared to be extra hazardous under the Act at that time. The court said that without regard to that contention tiling was clearly in its nature farm work. Thus, the arguably extra hazardous nature of the business did not bring it within the coverage of the Act as long as it was a part of farming.

The teachings of these cases can be summarized thusly: if a business or enterprise is independent, separate and not a

part of farming and is extra hazardous, it is covered by the Act. It follows that if a business or enterprise is part of farming it is not covered by the Act even though it may also fall into one of the extra hazardous categories. That interpretation of the status of the law after Peterson, Hill and Noverio is supported by the following statement from Angerstein, Illinois Workmen's Compensation, sec. 831, p. 486 (1952):

> "Farmers engaging in any work even though of a hazardous nature and of a nature similar to that enumerated in the various subsections of section 3, S.H.A. ch. 48, §138.3, are not automatically under the Act so long as such work is in fact merely a part of or incidental to their work of conducting a farm."

The question is, of course, whether these cases are applicable to the present statute. Although the wording of the farming exception has been completely changed and the list of extra hazardous activities has been greatly expanded since those cases were decided, it is my opinion that the answer must be in the affirmative. Just because the list and the exceptions have changed does not mean that the interrelationship between them has also changed. To the contrary, I believe that the definition of that interrelationship between them set out in

those cases still applies.

Applying the holding of the Peterson, Hill and Noverio cases to the language of section 3 as contained in Public Act 79-79 yields the following result: if employees of a farmer employer who hires less than 245 man days of labor during any calendar year are engaged in an undertaking, enterprise or business which is not an "agricultural employment" but is an extra hazardous undertaking, enterprise or business within the other 18 categories, the employer and employee would be covered by the Act. As long as an "agricultural employment" is involved, however, the fact that it also falls within one of the extra hazardous categories does not bring the employer and employee within the coverage of the Act.

Therefore, based on the wording of the exemption, the fact that taking extra hazardous activities out of the agriculture exemption would destroy it and the cases interpreting the exemption as previously worded, it is my opinion that employers and employees engaged in agricultural employments wherein less

than 245 man days of labor per calendar year are employed are exempt from the Workmen's Compensation Act as amended by Public Act 79-79 even if the employees are engaged in undertakings, enterprises or businesses that could be categorized as extra hazardous under section 3 of the Act.

Very truly yours,

A T T O R N E Y   G E N E R A L