STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

tion could be implied and no exemption allowed which was not specifically set out.

The fact that the bonds of the Maine Real Estate and Title Company were declared to be exempt from taxation in the charter of the company granted by the legislature of 1915 does not relieve the loan and building association from liability for this tax in my opinion. An amendment to the existing laws must be made specifically making such bonds free from liability to taxation in order to relieve an association from the provisions of this section 64 of Chapter 9.

Yours very truly,

GUY H. STURGIS,
Attorney General.

WORKMEN'S COMPENSATION—COMPUTATION OF AVERAGE WEEKLY WAGE WHERE EMPLOYEE WORKS SEVEN DAYS PER WEEK.

19th February, 1918.

Industrial Accident Commission, Augusta, Maine.

GENTLEMEN: We have your letter of January 29th, asking for an opinion as to the method of figuring the compensation under Chapter 50, Revised Statutes, Section 1, paragraph 9, where the injured employee labors seven days a week.

Chapter 50, Section 1, paragraph 9, provides two methods of arriving at the average weekly wages, earnings or salary of an injured employee.

First: If the injured employee has worked in the same employment in which he was working at the time of the accident for a year, his average weekly wages are found by multiplying his average daily wage by 300 and dividing by 52.

Second: If the injured employee has not so worked in such employment during substantially the whole year immediately preceding his injury, his average weekly wages are found by multiplying the average daily wages, earnings or salary of an employee of the same class working substantially the whole of the immediate preceding year in the same or similar employment by 300 and dividing by 52.

Said paragraph 9 further provides in subparagraph C. as follows:—

"In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time."

We understand that your question is as follows:

If the injured employee labors seven days per week shall his average weekly wages, earnings or salary be found under either of the two specific methods provided in paragraph 9, or shall a different method be used in accordance with subparagraph C of paragraph 9?

It is apparent that if an injured emloyee works seven days a week and his average weekly wage is found by multiplying his average daily wage by 300, and dividing by 52, he will receive the same compensation as if he worked six days a week.

It was said by Chief Justice Cornish in case of Hight v. York Manufacturing Company:—

"The object sought by the Workmen's Compensation Act is the ascertainment of the earning capacity of the workman as shown by his constant employment in the past, in order that the remuneration after shall have relation to the remuneration before the injury."

This cannot be done unless a different method is used in arriving at the average weekly wages, earnings or salary of an employee who works seven days a week than was used where an injured employee works six days a week.

The California Industrial Accident Commission had before it a similar case involving a similar statute. I quote from report of the case found in Honnold on Workmen's Compensation, Vol. 1, page 558.

"Where an employee is required by his contract of hire to work seven days per week, subdivisions 1 and 2 of subsection (a) of section 17 of the California Act cannot fairly and reasonably be applied. These subdivisions, which fix the average annual earnings at 300 times the average daily wage, clearly have reference only to employment for six days per week, as the number 300 is a fair average of days actually worked per year only for such men as work approximately six days per week throughout substantially

the whole year. Where an employee works seven days per week, his average annual earnings are to be computed by subdivision 3 of subsection (a) of section 17, and are to be found by multiplying the average daily wage by an arbitrary average representative of the number of days per year that one so employed actually works, and fixed by the commission at 332. Gallgher v. City of Los Angeles, 2 Cal. I. A. C. Dec. 26; Phillips v. Chanslor-Canfield Midway Oil Co. 1 Cal. I. A. C. Dec. 580.''

We are of the opinion that a different method of arriving at the average weekly wages, earnings or salary of the injured employee who works seven days a week must be used than by multiplying his average daily wages by 300 and dividing by 52. Whether the method used in California of multiplying the average daily wage by 332—an amount arbitrarily selected by the California Commission—and dividing by 52 is correct, we do not presume to say as that is a matter entirely within the discretion of the Industrial Accident Commission, but that a different method must be adopted than that used where an injured employee works six days a week, is, we believe, the only fair construction that can be placed upon the provisions of Chapter 50, Section 1, paragraph 9, subparagraph C. Revised Statutes 1916.

Very truly yours,

FRANKLIN FISHER,
Assistant Attorney General.