

MAINE STATE LEGISLATURE

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January 21, 1944

With reference to the matter of solicitors of the X Life Insurance Company under certain contracts, on which, in my letter of November 29, 1943, I advised you as follows:

"As a result of my investigation, it is my opinion that they are not performing services for remuneration solely by way of commission."

It has been brought to my attention that under certain circumstances such solicitors may be "performing services for remuneration solely by way of commission."

I believe the conclusions reached by the Internal Revenue Bureau, in construing the pertinent provisions of the Federal Unemployment Insurance Law, are correct and proper. Since the applicable provision in the Maine Law is identical with that in the Federal Law, it follows that I believe the conclusions reached by the Internal Revenue Bureau, in connection with the status of the insurance salesmen of the X Life Insurance Company, for unemployment compensation tax purposes are applicable to the status of those salesmen for purposes of the Maine Unemployment Compensation Law.

Please be advised that in my opinion the said rulings of the Commissioner of Internal Revenue are applicable to the laws of the State of Maine, and that solicitors held in said rulings to be "performing services for remuneration solely by way of commission" are excluded (under similar facts) from coverage under Sec. 19 (g) (7) (Q) of the Maine Unemployment Compensation Law.

Since the tax imposed by Sec. 7 (a) (1) of the Maine Unemployment Compensation act is levied upon a calendar year basis, the ruling of this Commission should be applied with respect to each taxable period which is a calendar year. That is, that none of the services of an agent performed for the X Life Insurance Company during a calendar year come within the exemption from employment defined in Sec. 19 (g) (7) (Q) unless during the entire calendar year all such services performed by him are remunerated "solely by way of commission."

This opinion of course does not preclude the right of any individual to file a claim for benefits and to substantiate that he was, in fact, an employee under the Act.

John G. Marshall
Assistant Attorney General