

# MAINE STATE LEGISLATURE

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January 25, 1946

To the Unemployment Compensation Commission  
Re: Officers of Corporations who Perform NO Services or only Nominal  
or Minor Services and Receive No Compensation.

The Maine Unemployment Compensation Law does not include the definition of the Federal Unemployment Tax Act that "the term 'employee' includes an officer of a corporation" (Section 1607 (i) of the Federal Unemployment Tax Act.)

The Maine Unemployment Compensation Law merely defines employment as "services performed. . . for wages or under any contract of hire, written or oral, expressed or implied."

Under date of January 4, 1946 the Commissioner of Internal Revenue issued a Mimeograph entitled "Status, for Federal Employment Tax Purposes, of Corporated Officers who Perform no Services or Only Nominal or Minor Services and who Receive no Compensation. . .

Since the Maine Unemployment Compensation Law has never contained the specific definition that an officer of a corporation is an employee, corporate liability to pay contributions to the Maine Unemployment Compensation Commission with respect to employment in Maine has technically, in many cases, existed because of the provision of the Maine Law which imposes liability on "any employing unit which . . . is liable to pay an excise tax under Title IX of the Social Security Act, as amended" (nor the Federal Unemployment Tax Act).

In such instances where the liability of a corporation depends upon the counting of corporate officers not clearly employees of the corporation (that is to say, corporate officers who perform no services of only nominal or minor services, and who receive no compensation) liability to the Maine Unemployment Compensation Commission exists solely by virtue of liability to pay the Federal Unemployment Tax. The Maine Unemployment Compensation Commission and its representatives therefore have no responsibility for determining the status of such officers.

Employers who are in doubt as to the applicability of the rule of eight because such applicability involves the counting of doubtful corporate officers should seek a determination of their status from Federal authorities rather than the Maine Unemployment Compensation Commission.

In view of the liability, however, to the Maine Unemployment Compensation Commission, whether or not payment is made in time to take credit against Federal taxes, employers should be careful to obtain a ruling on their status under the Federal Law in ample time to pay such contributions as may be due the Maine Unemployment Compensation Commission on or before the final due date.

John S. S. Fessenden  
Assistant Attorney General