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October 7, 1947

To L. C. Fortier, Chairman, M. U. C. C.
Re: "Voluntary Elections"

You have asked for an interpretation of section 8 (c) (2) of the unemployment compensation law as to whether one or more of the exemptions under section 19 (g) (7) may be approved as voluntary elections without covering all exempt employment.

At the outset, it should be noted that the basic difference between section 8 (c) (1) and section 8 (c) (2) is that section 8 (c)(1) provides for voluntary election of non-covered employment, while section 8 (c) (2) provides for voluntary election to cover exempt employment. In other words, the first section pertains to employment which would be covered if the rule of 8 applied, while the second section pertains to a field of employment which cannot be reached even through the rule of 8.

Section 19 (g) (7) exempts sixteen (16) widely different and unrelated fields of employment. The immediate part of section 8 (c) (2) which requires construction in order to answer your question reads as follows:

> "Any employing unit for which services that do not constitute employment as defined in this act are performed, may file with the commission a written election that all such services performed by individuals in its employ in 1 or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than 2 calendar years."

The word "services" is used twice in this sentence. In the first instance, the word "services" refers to services in any one of the sixteen categories exempted in section 19 (g) (7). In the second instance where the word "services" is used, it is modified by "all such" and refers back to the "services" as the word is used in the first instance in the same sentence. Therefore, an employing unit for which services are performed in any one of the sixteen exempted categories may elect to cover all of such services performed for it within the particular exempt category, provided such election is approved by the Commission.

It is noted that the foregoing construction will require a revision of the Commission's Form MUC 3 (Rev. 1-46), in that such form is not readily adapted to set forth the category of service subject to the voluntary election.

Inasmuch as a change in Form MUC 3 is desirable, I should like to point out also that an employing unit electing to cover any particular category of exempt services performed for it may also specify in which

one or all of its distinct establishments or places of business in the state such election shall be pertinent. In other words, if an employing unit had several distinct places of business in the state, it might elect to cover exempt services in one establishment, but not include its other establishments. This procedure is not readily available under Form MUC 3 as it now reads.

If Form MUC 3 is to be revised, a further distinction should be recognized between the election provisions of section 8 (c) (1) and section 8 (c) (2) in that under the provisions of section 8 (c) (1), an approved election to become subject renders the employing unit subject to the same extent as all other employers as of the date stated in such approval. On the other hand, an approved election under the provisions of section 8 (c) (2) does not render the employing unit subject to the same extent as all other employers, but is effective from and after the date stated in such approval. Generally speaking, this distinction may not be important, but it could become important under particular facts or circumstances. For example, under section 8 (c) (1), the dated stated in the approval being within a calendar year renders the employing unit subject to the act during the whole of the calendar year (see sec. 8 (a)), whereas, under the provision of section 8 (c) (2), the Commission can specify a date within the calendar year from and after which the exempt services shall be covered without rendering the employing unit liable as an employer for the whole of the calendar year. Form MUC 3 at the present time is not readily adaptable to the foregoing distinction.

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