February 1, 1961

Adrian W. Clewiston, Chairman

Frank A. Farrington, Assistant Attorney General

Legal Opinion on the Interpretation of "most recent subject employer"

Your memorandum of January 30, 1961, addressed to Mr. Bradford, requests a Legal Opinion on the interpretation of "most recent subject employer" as used in Section 17,III, paragraphs A and C of the Maine Employment Security Law.

Mr. Bradford has referred the memorandum to me for a reply.

Section 17,III,A reads in part as follows:

> "...Benefits paid to an eligible individual under the provisions of the Maine employment security law shall be charged against the 'experience rating record' of the claimant's most recent subject employer or to the general fund if the otherwise chargeable 'experience rating record' is that of an employer whose status as such has been terminated;..." (Emphasis supplied.)

Section 17,III,C of said law reads:

> "C. For the purposes of paragraph A of this subsection, the experience rating record of the most recent subject employer shall not be charged with benefits paid to a claimant whose work record with such employer totalled 5 consecutive work weeks or less but in such case the most recent subject employer with whom claimant's work record consisted 5 consecutive work weeks shall be charged if such employer would have otherwise been chargeable had not subsequent employment intervened." (Emphasis supplied.)

U.S. Department of Labor publication BES No. U-11A, Comparison of State Unemployment Insurance Laws as of January 1, 1960, in discussing employer accounts under experience rating provisions, at page 33, reads in part as follows:

> "Charging most recent employers.--In four States (Maine, New Hampshire, South Carolina, and West Virginia) with a reserve-ratio system, Vermont with a benefit-ratio, Virginia with a benefit wage-ratio, Kentucky with a benefit-contributions-ratio, and Connecticut with a compensable-separation system, the most recent employer gets all the charges on the theory that he has

primary responsibility for the unemployment." (Emphasis supplied.)

A survey of the States listed in the above quotation, made in Commerce Clearing House Unemployment Insurance Service, failed to disclose a specific answer to your request by way of any judicial or administrative decision. It is my belief, however, that there is justification for the conclusion underlined in the quotation from BNA No. U-141, supra.

In no State was any authority found for charging the account of an employer with benefits paid to an eligible claimant to whom said employer continues to furnish the same amount of work he had been hired to perform.

In New Hampshire, the employment security law provides that the Director shall prescribe the manner in which benefits shall be charged against employers for whom an individual performs services at the same time. By Rule No. 3, promulgated in furtherance of that provision, the account of employers who continue to furnish the claimant substantially the same amount of employment shall not be charged with benefits paid during such period of continued employment.

On September 5, 1947, the late John A. S. Fournier, Esq., one of the pioneers of unemployment compensation administration in Maine, was Attorney for the then Maine Unemployment Compensation Commission. On that date he wrote an interpretation of the section of the law then in effect which had to do with charging employer accounts.

Except for the fact that it is now 2 instead of "3 consecutive work weeks," the following quotation from his interpretation could have been with reference to Section IV,III,C of the present law:

> "The section to be construed refers to a claimant's 'work record' with his 'employer' for 'consecutive work weeks'. The conclusion would seem to be irresistible that in each case wherein this section is involved in connection with the chargeability of benefits for experience rating purposes, the work week schedule of the employer who alleges that a claimant's services were for a period of less than '3 consecutive work weeks' should be the measure of that which defines the term 'work week'. It should be equally clear that in any particular case, the employer's work week schedule should be the schedule of employment for the purpose claiming benefits in the category of work which that claimant was hired to perform."

The purpose of merit rating is to allow an employer consideration for a good employment record. Changes to an employer's experience rating record affect, adversely, his chances of obtaining a rate lower than 2.7% of his payroll by way of contributions.

The statement of policy contained in Section 1 of the Maine Employment Security Law clearly indicates the intent to prevent unemployment as well as alleviate the consequences when it occurs.

An interpretation of said law which would tend to cause an employer to refrain from giving work to an unemployed individual, at earnings below the amount he could receive in unemployment benefits, would be contrary to the expressed intent of the law.

It is my opinion that the words last prior subject employer cannot be interpreted to mean that employer who is still furnishing (to use the words of Mr. Fleuntier, as quoted above) "...the schedule of employment for the person claiming benefits in the category of work which that claimant was hired to perform."

In my opinion, the words last prior subject employer in Section 17, III, paragraphs A and B of the Maine Employment Security Law must be interpreted to mean the last subject employer for whom the eligible individual has worked but for whom he is not working at all; or, that subject employer for whom the eligible individual is working but who is supplying said individual with less work than that which he was hired to perform.

/s

cc - Mr. Cote
Mr. George