OFFICIAL OPINION NO. 98

September 11, 1945.

Hon. Noble R. Shaw, Director,
Indiana Employment Security Division,
141 South Meridian Street,
Indianapolis 12, Indiana.

Dear Sir:

I am in receipt of your letter of July 30th as follows:

> "One of the most commonly directed criticisms of the administration of unemployment compensation by the states rather than by a Federal agency has been that migrant workers were deprived of benefits when wages were earned in more than one state but with an inadequate amount in any one state to entitle a worker to benefits in any state. In order to correct this defect the Interstate Conference of Employment Security Agencies has approved and submitted to state agencies for approval and subscription a reciprocal plan whereby the wages of such workers earned in different states may be combined where the worker has an insufficient amount of earnings in any one state. Such workers may then obtain benefits based upon such combined wages, and the benefits so paid are charged against the states in which the workers had earnings, in the ratio of the wages earned in each state to the total earned in all states participating in the plan. The worker's claim and benefits paid thereunder would be governed by the law of the state in which the claim was filed. I am attaching a copy of such Interstate Arrangement for the Combining of Wages.
>
> "If the Indiana Employment Security Board subscribes to such reciprocal agreement with other states, as thirty-two states have already done, for combining wage credits for such workers and agrees that the proportionate part of benefits paid may be charged to the Indiana agency in the ratio of Indiana earnings to the total earned in all subscribing states during the claimant's base period, then and in such cases the following questions are presented:

"1. If the claim is filed in and paid in accordance with the law of another state will the charges against the chargeable Indiana employer's account be limited to 25 per cent of the wage credits earned from such employer?

"2. If the claim is filed in and benefits paid in accordance with the law of another state, will the charges against a chargeable Indiana employer's account be reduced if the claimant was, by the terms of the Indiana law, subject to a disqualification and reduction of total benefit amount, pursuant to section 7 (f), if his claim had been filed in Indiana?

"3. If the claim is filed in and benefits paid in accordance with the law of another state, will charges against a chargeable Indiana employer's account be limited to a maximum of $20 a week and a maximum duration of twenty weeks, as provided respectively by section 6 (b) (1) and 6 (c)?"

"Your official opinion in response to these questions will be appreciated."

The Indiana Employment Security Act creates what is generally referred to as the "Reserve Fund" system of unemployment compensation for which a "pooled fund" system will be substituted January 1, 1946. Under this reserve fund system a proportion of the contributions paid in by the employer are credited to a reserve account kept in the employer's name. Compensation paid to that employer's employees is charged against that particular reserve account and the ratio of that reserve account to total wages paid and total charges against it in preceding periods determines the percentage on payrolls which the employer must pay in succeeding periods. The remaining part of the contributions paid in are paid into a pooled account which is maintained as a contingent reserve to pay claims exceeding the balance in an employer's reserve account.

Paragraph (3) of subsection (i) of Section 10 of the Employment Security Act (Section 52-1510, Burns' 1933), the

latest amendment of which is contained in Section 9 of Chapter 315 of the Acts of 1945, provides as follows:

> "(3) The Board is authorized to enter into arrangements with the appropriate agencies of other states or jurisdictions or of the United States of America, (A) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or jurisdiction or of the United States of America, shall be deemed to be wages for employment by employers for the purposes of section 6 and section 7 (e) of this act, provided such other agency or jurisdiction has agreed to reimburse the Fund for such portion of benefits paid under this act upon the basis of such wages or services as the Board finds will be fair and reasonable as to all affected interests, and (B) whereby the Board will reimburse any other such agency or jurisdiction charged with the administration of unemployment compensation laws with such reasonable portion of benefits, *paid under the law of any such other states* or jurisdictions or of the United States of America upon the basis of employment or wages for employment by employers, as the board finds will be fair and reasonable as to all interests. Reimbursements so payable shall be deemed to be benefits for the purpose of section 6 (c) and 13 of this act, and shall be charged against the reserve or experience accounts of employers *in the same manner as benefits are charged against reserve or experience accounts of employers under the provisions of section 4 (c) hereof.* The Board is hereby authorized to make to any other agency of any state or jurisdiction or of the United States of America and receive from such other agency or jurisdiction, reimbursement from or to the Fund, in accordance with arrangements pursuant to this section." (Our emphasis.)

It will be noted from the above section that it is contemplated that benefits be "paid under the law of any such other states" and that the board is to reimburse such other states in such amounts as it finds will be fair and reasonable

to all concerned. By Clause (A) benefits payable to workers in Indiana are to be paid under the law of Indiana and the provisions of Sections 6 and 7 are specifically incorporated as terms upon which the benefits shall be payable. It would, therefore, not seem to be the legislative intent that the disqualifications and limitations imposed by Sections 6 and 7 of the Indiana Act (which concern the payment of benefits) would be applicable where the benefits are paid by another state under the terms of an interstate agreement, and that the benefits in such case would be governed entirely by the provisions of the law of such other state.

By Clause (B) of Section 10 (i) (3) the reimbursements so made by the board are included as benefits for the purpose of Section 6 (c) and 13 of the Act. Section 6 (c) provides:

> "Duration of Benefits. Benefits shall be computed upon the basis of wage credits of an individual in his base period. Wage credits shall be reported by the employer and credited to the individual in the manner prescribed by the board. For the purpose of charging the individual with benefits paid to him, such benefits shall be charged proportionately against such wage credits in the inverse chronological order in which such wage credits were established; *Provided,* That when wage records of the Division do not indicate the order and sequence of an individual's employment and employers within any quarter of the base period, then and in such cases the Board may by rule prescribe the manner and method of charging such benefits against the accounts of such employers within the same calendar quarter. The maximum total amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty times his weekly benefit amount or 25 per centum of his uncharged wage credits with respect to his base period, whichever is the lesser. If such maximum total amount of benefits is not a multiple of one dollar, it shall be computed to the next lower multiple of one dollar."

By this reference to this subsection the benefits so payable are chargeable against the wage credits of the employee. Section 13, so referred to, provides that all benefits may be payable out of the employment security fund. This fund

consists of all moneys available for the payment of benefits and until January 1, 1946 includes both the pooled account and the reserve accounts.

Upon such payment Section 10 (i) (3) (B) requires that

> "* * * Reimbursement so payable * * * shall be charged against the reserve or experience accounts of employers in the same manner as benefits are charged against reserve or experience accounts of employers under the provisions of section 4 (c) hereof. * * *"

Section 4 (c) provides for the maintenance within the employment security fund until January 1, 1946, of employers' reserve accounts and provides that benefits chargeable to such an employer's reserve account shall be paid therefrom and that if such reserve account be insufficient it shall be supplemented by moneys from the pooled account, which supplemental payments from the pooled account shall be considered a liability of the employers' reserve account. Section 4 (c) (2) provides for the pooled account until January 1, 1946, and also provides for the supplementing of exhausted reserve accounts from the pooled account. Section 4 (c) (3) provides for the termination of reserve accounts on January 1, 1946 and their transfer to the pooled account on that date. Section 4 (c) and (5) are not here relevant. It will be noted that in paragraph (B) of Section 4 (c) (1), which concerns the charging of benefits to employers' reserve accounts prior to January 1, 1946, there is a limitation upon the amount of benefits to be so charged, such limitation being 25 per cent of the total wages during the employees' base period.

Section 10 (i) (3) requires that interstate benefits shall be charged in the same manner as benefits are charged against reserve accounts under the provisions of Section 4 (c), but does not provide that the benefits so required to be charged be limited in extent by the provisions of Section 4 (c). "Manner" means "method," "mode" or "way" and does not connote "extent" or "amount."

> Mitchell v. Banking Corp. (1933), 94 Mont. 165;
> Adams v. Terrell (1908), 101 Tex. 331, 333;
> Cox v. Commission (1942), 168 Ore. 508, 514;
> Pere Marquette Railway Co. v. Utility Commission (1922), 218 Mich. 307, 311.

Therefore, the statutory limitation as to such payments that they be charged in the manner provided in Section 4 (c) must be interpreted as referring to the method of proceeding and not to the extent or the amount of the payments.

In view of the fact that it is required by the statute that the amounts payable to the other state must be fair and reasonable to all concerned, I can see no constitutional question arising out of any claim or charge under this section.

See:

Carmichael v. Southern Coal & Coke Co. (1937), 301 U. S. 495, 109 A. L. R. 1327.

I am, therefore, of the opinion that it was the intent of the Legislature that such interstate claims should be paid in accordance with the law of the state in which the employee is located, with the limitations and disqualifications contained in that law and without the limitations and disqualifications contained in Sections 6 and 7 of the Indiana law, and that the charges against the chargeable Indiana Employers' Reserve account are not limited in amount by any provision of Section 4 (c).

OFFICIAL OPINION NO. 99

September 11, 1946.

Hon. Ralph F. Gates, Governor,
State of Indiana,
State House,
Indianapolis 4, Indiana.

My dear Governor:

Your letter of August 28, 1945, has been received in which you request an opinion as to whether or not the members of the State Board of Barber Examiners can also work as inspectors for such board and draw pay for such services.

Section 63-323 Burns' 1933, same being Section 23, Chapter 48, Acts 1933, provides as follows:

"The board shall have authority to make reasonable rules and regulations for the administration of the