Mr. Harold Hatcher  
Executive Director  
Indiana Civil Rights Commission  
1004 State Office Building  
Indianapolis, Indiana

Dear Mr. Hatcher:

This is in reply to your letter requesting an Official Opinion as follows:

"At a recent meeting of the Civil Rights Commission, it was voted to ask for an official opinion on the following question: Are independent contractors included in the term 'employee' as used in the Indiana Civil Rights Act of 1963 which declares equal employment opportunities to be a civil right? The above question is raised by a complaint now before our Commission."

The Indiana Civil Rights Act is the Acts of 1961, Ch. 208, as amended by the Acts of 1963, Ch. 173, and as found in Burns' (1964 Supp.), Section 40-2307 et seq. The Act defines "employee" and "employer" in Burns' 40-2309, supra, as follows:

"As used in this act unless the context clearly requires otherwise:

* * *

"(d) The term 'employer' includes the state, or any political or civil subdivision thereof, and any person employing six [6] or more persons within the state; except that the term 'employer' does not include any not for profit corporation or association organized for fraternal or religious purposes, nor any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution, nor any exclusively social club, corporation or association that is not organized for profit."
The term 'employee' should not include any individual employed by his parents, spouse, or child, or in the domestic service of any person."

The Civil Rights Act does not proscribe "discrimination" in the hiring of an "employee." The purpose of the act is stated in Burns' 40-2308, supra, as follows:

"It is the public policy of the state of Indiana to provide all of its citizens equal opportunity for education, employment, and access to public conveniences and accommodations. Equal education and employment opportunities and equal access to and use of public accommodations are hereby declared to be civil rights.

"The practice of denying these rights to properly qualified persons by reason of the race, creed, color, national origin or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, creed, color, national origin or ancestry through reasonable methods that do not create that which it seeks to enjoin is the purpose of this act. It is also the public policy of this state to protect the employers, labor organizations and employment agencies from unfounded charges of discrimination."

This is the only place in the act where the "civil rights" that a person possesses are delineated. The denial of the civil right to "equal opportunity for employment" is declared to be a "discriminatory" practice.

The distinction between an "employee" and "independent contractor" is a technical legal distinction which is meaningless in terms of the Civil Rights Act. The act does not attempt to define employee so as to distinguish this position from that of an independent contractor. The act merely proscribes discrimination in "employment." Further, the act does not define what constitutes an "employment."
One of the duties of the commission as outlined in Burns’ 40-2312, supra, is as follows:

“(d) To formulate policies to effectuate the purposes of this act * * *”

One of the purposes of the act is to prohibit discrimination in “employment.” The commission must therefore determine for itself whether there is an unlawful discriminatory practice in “employment” and seek to effectuate the purposes of the act as outlined in Burns’ 40-2309, supra.

The answer to your question therefore cannot be given in terms of the Civil Rights Act. In short, it makes no difference as far as the Civil Rights Act is concerned whether an individual is an “employee” or an “independent contractor.” The act does not speak in terms of such a distinction. The crucial question for the commission is whether a condition exists between two persons which can be called an “employment.” This determination can only be made by the commission, keeping always in mind the purpose of the act as set out above.

OFFICIAL OPINION NO. 50

September 1, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis, Indiana

Dear Mr. Courtney:

This is in response to your recent letter in which you requested an Official Opinion upon the following question:

“Will you please advise me by way of an official opinion whether the transfer of proceeds (such as crops, timber, rentals, monies, sale price, etc.) derived from entireties owned property to the surviving spouse is taxable upon the death of one of the spouses under the provisions of Section 1 of the Inheritance Tax Law of the State of Indiana, Acts of 1931, ch.