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Opinion No. 86-352

September 22, 1986

Mr. Bobby Tullis
State Representative
Box 277
Mineral Springs, AR 71851

Dear Representative Tullis:

This letter is in response to your Opinion request wherein you provided the following fact situation followed by two specific questions:

Fact Situation: The owners of one corporation form another corporation with the addition of one owner. The owners then hire employees through the new corporation, and the new corporation leases equipment from the old corporation, and then subcontracts work from the old corporation.

Questions:

1. Which corporation will be responsible for worker's compensation?

The corporation in whose employment the employee was working at the time of the injury will be responsible for his or her worker's compensation benefits. Ark. Stat. Ann. §81-1305 and §81-1306. This is a fact question to be determined on the particular circumstances of each case. Since in the fact situation you presented the new corporation hired the employees and presumably pays them, it is most likely that it will be responsible for providing their worker's compensation benefits. Furthermore, please

be advised every "employer," as defined in the Worker's Compensation Act, is required to secure payment of compensation by insuring and keeping insured the payment of such compensation with any carrier authorized to write worker's compensation insurance or by self-insurance. Ark. Stat. Ann. §81-1336.

Your second question is:

2. Could an audit be made of the payroll records of the new corporation (on which to base worker's compensation) since the old corporation would have no payroll or payroll records, only production records?

Yes. Although there is no statutory basis authorizing such an audit, the "Assigned Risk Pool Rules" developed by the International Council on Compensation Insurance, which have been approved by the Arkansas Insurance Commission, direct payroll records must be used if they are available. Traditionally, an insurance company has a right to audit its insureds payroll records and use such to base the insured's premium rates. This right is almost invariably addressed in the insurance contract itself. This office is without sufficient information to determine whether the contract in the specific situation you identified gives the insurance company the right to audit the new corporation's payroll records.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General David S. Mitchell.

Sincerely,



STEVE CLARK
Attorney General

SC/DSM/ljm