



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

June 4, 1954

Hon. Weldon Hart, Chairman
Texas Employment Commission
Austin, Texas

Opinion No. S-127

Re: Construction of Article 5221b-5
(c)(5), V.C.S., to determine the
denominator of the fraction rep-
resenting "State experience fac-
tor" as that term is used in the
above statute.

Dear Mr. Hart:

You have requested an opinion from this office; the sub-
stance of your question I quote from your letter as follows:

"Under Section 7 of the Unemployment Act (Art.
5221b-5, V.C.S.) from which the foregoing quotations
have been taken, what is prescribed as the denominator
of the fraction representing the State experience factor?
Is it the State-wide total of all 'benefit wages' or is it
the State-wide total of all 'employers' benefit wages'?"

Article 5221b-5 (c)(5), Vernon's Civil Statutes, reads as
follows:

"(5) For any calendar year the total benefits
paid from the fund, less all amounts credited to the
fund except employers' contributions collected under
this Section, and except interest earned on the fund,
shall be termed the 'amount required from employers.'
The amount required from employers, divided by the
State-wide total of 'benefit wages' for that calendar
year, after adjustments to the nearest multiple of one
(1%) per centum shall be termed the 'State experience
factor.' The State experience factor for any year shall
be determined prior to the due date of the first contri-
bution payment on wages for employment in that year
and such determination shall be made upon the basis of
figures for the preceding calendar year; such State ex-
perience factor shall not be affected by any subsequent
adjustment of any employers's benefit wages." (Empha-
sis added.)

The terms "benefit wages" and "employer's benefit wages"
are defined in Article 5221b-5 (c)(2)(A). This office is of the opinion
that the Legislature's particular use of the term "benefit wages" in
setting out the denominator of the fraction representing the "State

experience factor" means "benefit wages," not "employer's benefit wages."

Prior to a 1949 amendment of this statute the meanings of the words "benefit wages" and "employer's benefit wages" were synonymous. Section 5 of Chapter 148, Acts of 51st Legislature, 1949, page 283, changed the meanings of these terms so that "employer's benefit wages" now has a meaning different from that of "benefit wages." In Section 5B of Chapter 148, Acts of 51st Legislature, the Legislature amended the language defining "State experience factor." Prior to the amendment the pertinent language defining "State experience factor" read as follows:

". . . The amount required from employers, divided by the state-wide total of 'employer's benefit wages' of all employers for that calendar year, after adjustments to the nearest multiple of one per centum (1%) shall be termed the 'State experience factor'. . . ."

Section 5B substituted in lieu of the above-underlined words the term "benefit wages." It is a well established doctrine of statutory construction that the change of language of a statute by amendment should be given effect. 39 Tex.Jur. 241, Statutes Sec. 128; see also Putnam Supply Co. v. Chapin, 45 S.W.2d 283 (Tex.Civ.App. 1931); Robinson v. Whaley Farm Corporation, 120 Tex. 633, 37 S.W.2d 714; Gately v. Humphrey, 254 S.W.2d 98 (Tex. Sup. 1952). And, the fact that the Legislature specifically re-defined the two terms herein discussed is indicative that the Legislature was conscious of the distinction and specific use of these terms in the statute.

SUMMARY

The State-wide total of all "benefit wages" is the denominator of the fraction constituting the "State experience factor," within the contemplation of the Texas Unemployment Compensation Act.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General


APPROVED:

W. V. Geppert
Taxation Division

J. A. Amis, Jr.
Reviewer

John Atchinson
Reviewer

Robert S. Trotti
First Assistant

By 
William W. Guild
Assistant