



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 7, 1993

Mr. David Myers
Executive Director
Texas Commission for the
Deaf and Hearing Impaired
P.O. Box 12904
Austin, Texas 78711

Letter Opinion No. 93-111

Re: Whether interpreters for the deaf hired by councils that contract with the Texas Commission for the Deaf and Hearing Impaired are employees or independent contractors (ID# 22176)

Dear Mr. Myers:

Your predecessor asked whether interpreters for the deaf hired by councils that contract with the Texas Commission for the Deaf and Hearing Impaired (the "commission") are employees or independent contractors. He explained that the commission "contracts with a number of local service providers, traditionally known as Councils for the Deaf, to provide statutorily mandated direct services, including interpreter services . . . Historically, . . . the interpreters who provide interpreter services through the councils have been considered independent contractors and not employees." In addition, he stated that the Texas Employment Commission audited two councils in 1991 and determined that the interpreters of those councils are employees, and that the United States Internal Revenue Service issued an opinion to an independent agency that its interpreters are independent contractors. In light of this confusion, he asked this office to definitively determine the employment status of such interpreters.

The commission is authorized by chapter 81 of the Human Resources Code to provide interpreter services to the deaf directly or to contract with or provide grants to other entities to provide such services. See Hum. Res. Code §§ 81.006(a)(2), 81.016. In addition, the commission's rules state the commission "is responsible for developing and providing quality services to deaf and hearing-impaired individuals through contracting agencies, organizations, or individuals, with assistance from the Texas Commission for the Deaf office." See 40 T.A.C. § 181.26. These rules also establish fee schedules for the services of interpreters paid through commission contracts. See 40 T.A.C. §§ 181.820 - .850. Neither the Human Resources Code nor the commission rules, however, state whether interpreters employed by entities that contract with the commission are independent contractors or employees.

The Texas Supreme Court recently described the legal test for distinguishing between employees and independent contractors as follows:

The test to determine whether a worker is an employee or an independent contractor is whether the employer has the right to

control the progress, details, and methods of operations of the employee's work. *Newspapers, Inc. v. Love*, 380 S.W.2d 582, 585-90 (Tex. 1964). . . . The employer must control not merely the end sought to be accomplished, but also the means and details of its accomplishment as well. *Travelers Ins. Co. v. Ray*, 262 S.W.2d 801, 803 (Tex. Civ. App.--Eastland 1953, writ ref'd). Examples of the type of control normally exercised by an employer include when and where to begin and stop work, the regularity of hours, the amount of time spent on particular aspects of the work, the tools and appliances used to perform the work, and the physical method or manner of accomplishing the end result. See *United States Fidelity and Guar. Co. v. Goodson*, 568 S.W.2d 443, 447 (Tex. Civ. App.--Texarkana 1978, writ ref'd n.r.e.). [Citation omitted.]

Thompson v. Travelers Indem. Co. of R. I., 789 S.W.2d 277, 278-79 (Tex. 1990). Courts apply this test to distinguish between employees and independent contractors in the context of disputes under both the common law and workers' compensation statutes. See *id.* at 278 (citing *Elder v. Aetna Casualty & Sur. Co.*, 149 Tex. 620, 623, 236 S.W.2d 611, 613 (1951)).

The unemployment compensation statutes define the term "employment" broadly to include any service performed for wages under any contract of hire, written or oral,

provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the [Texas Employment] Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact.

V.T.C.S. art. 5221b-17(g)(1). In determining whether a worker is an employee or an independent contractor for purposes of the unemployment compensation laws, courts consider factors similar to those considered under the common-law test. See *Barnett v. Texas Employment Comm'n*, 510 S.W.2d 361, 363 (Tex. Civ. App.--Austin 1974, writ ref'd n.r.e.) (noting that statutory standard for liability under the Unemployment Compensation Act is similar to common-law test).

Clearly, the determination whether an interpreter is an employee or an independent contractor is fact-based and depends upon each interpreter's contractual relationship with the council for which he or she performs interpreter services. You have not provided us with sufficient information about the contractual relationships between the councils and the interpreters they hire. Furthermore, even if you had provided us with more information about these contractual relationships, it is likely that such relationships vary from council to council. Indeed, such differences may account for the differing opinions to which you refer. This office cannot resolve questions of fact in the opinion process, see, e.g., Attorney General Opinions DM-98 (1992) at 3; H-56 (1973), nor does this

office generally construe contracts, *see, e.g.*, Attorney General Opinions DM-192 (1992) at 10; JM-697 (1987) at 6. For these reasons, we are unable to definitively determine whether interpreters hired by councils that contract with the commission are employees or independent contractors under Texas law.¹

S U M M A R Y

Under Texas law, the determination whether an interpreter for the deaf hired by a council that contracts with Texas Commission for the Deaf and Hearing Impaired is an employee or an independent contractor is a question of fact and is therefore beyond the purview of the opinion process.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹You also appear to be interested in interpreters' status for purposes of the United States tax laws. The views of the Internal Revenue Service on that subject are much more authoritative than the views of this office would be.