

June 16, 1939.

OPINION NO. 1712

TERRITORIAL SHOP FOR THE
ADULT BLIND; STATUS OF
WORKERS.

Blind persons employed in the territorial shops for the adult blind are not employees of the Territory.

SAME; TAXABILITY OF WORKERS.

Blind persons, working in territorial shops for the adult blind are not subject to the unemployment relief tax but are subject to the gross income tax.

Board of Public Welfare,
Territory of Hawaii,
Honolulu, T. H.

Sirs:

In reply to your letter of May 16, enclosing a letter from Mrs. Hamman, Director of the Sight Conservation Bureau, please be advised that in my opinion the blind persons employed in the territorial shops for the adult blind are not employees of the Territory.

I assume that all of the persons concerned are engaged in craft work and in producing products for sale, and I am advised by Mrs. Hamman that they are paid in accordance with their experience and contribution to the work, all of them receiving the same pay, however, when they have obtained sufficient experience to make a full contribution to the work, to the extent that the money available from the sale of the products justifies such compensation.

It seems evident that the Territory is not engaged in the business of making such products, and that the

shops are merely the means of enabling the blind persons to help themselves. As noted in my letter of January 21, 1939, the cases as to the status of relief workers are in conflict, some of the cases, though not the majority, holding that such relief workers are employees. 96 A. L. R. 1154. It appears, however, that in most of the cases where such relief workers are classified as employees they are engaged in fulfilling the work of the state or other body affording the relief, and a well known test for determining whether a person occupies the status of an employee is the question whether the work he is doing is the work in which the employer is engaged. Compare *Hall v. Salvation Army*, 184 N. E. 691. We have not found any authority which went so far as to say that persons in the situation of these workers in the shops for the blind are employees of the state.

In *Hanson v. St. James Hotel* 254 N. W. 4, it was held that an inmate of a charitable institution who did some work about the lodging house maintained for the indigent was not an employee of the institution. We believe this rule is applicable here.

I note that these blind persons have been paying unemployment relief tax. It would seem that they are not subject to the unemployment relief tax but are subject to the gross income tax.

Very truly yours,

RHODA V. LEWIS,
Deputy Attorney General.

APPROVED:

J. V. HODGSON,
Attorney General.