



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Orville S. Carpenter
Chairman and Executive Director
Texas Unemployment Compensation Commission
Austin, Texas

Dear Sir:

Opinion No. 0-1724
Re: Applicability of sub-
sections (1) and (4)
of Section (f) of Art.
5221b-17, Vernon's Re-
vised Civil Statutes,
to factual situation
hereinafter set out.

We received your letter of November 22, 1939, re-
questing our opinion as to the application of sub-sections
(1) and (4), Section (f) of Article 5221b-17, Vernon's Anno-
tated Civil Statutes, to the following fact situation which
we quote from your letter as follows:

"A owns Newspaper N individually. He there
has five individuals in employment during
the calendar year 1938. A acquires owner-
ship of Newspaper Z during the twenty-second
week of 1938. Newspaper Z has two persons
in employment during the first twenty-five weeks
of the calendar year 1938. Newspaper Z is valued
at \$14,000. During the twenty-fifth week of 1938,
A sells a \$2,000 partnership interest in News-
paper Z to B. During the twenty-sixth week and
all remaining weeks in 1938, Newspaper Z has six
individuals in employment. The partnership agree-
ment is not in writing and there is no agreement
as to control or management of its operations.

"Does Section 19 (f) (4) apply to this fact
situation to render both N and Z employers
under the Texas Unemployment Compensation Act?"

Sub-sections (1) and (4) of Section (f) reads as follows:

"(f) 'Employer' means

"(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment eight (8) or more individuals (irrespective of whether the same individuals are or were employed in each such day);

** * *

"(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interest, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

** * *."

The factual situation contained in your letter raises the question whether or not the owner of a six-sevenths (6/7) partnership interest in a newspaper owns or controls said partnership business within meaning of sub-section (4) of Section (f) of Article 5221b-17, supra, in the absence of an agreement as to the control and management of said partnership.

It is generally held that each partner, in the absence of an agreement to the contrary, has an equal right to control and manage the business. 49 Corpus Juris. ch. 295. It is also the general rule that a partner does not own any particular interest in a partnership enterprise but his interest extends only to a proportionate share of what may remain after payment of the debts of the partnership and the settlement of its accounts. Sherk v. Bank, 206 S. W. 507.

We are of the opinion that the Legislature, being familiar with the above rules, nevertheless, intended that an individual owning a six-sevenths (6/7) interest in a partner-

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ship business does own or control the business in the absence of an agreement to the contrary. This intent is derived from sub-section (4) of Section (f) of Article 521b-17, which provides that if one employing unit "owned or controlled (by legally enforceable means or otherwise) directly or indirectly", another employing unit, then they would be treated as one unit under the Act. The words "owned" and "controlled" are general terms and their meaning would vary according to their use.

This being true, Newspaper "N", which "A" owns outright, and Newspaper "Z", of which "A" owns a six-sevenths (6/7) partnership interest, are to be treated as one employing unit and are considered an employer within the Act. Beginning on the twenty-sixth (26th) week, both newspapers, together having eight (8) individuals in their employment would be liable for said taxes at the beginning of the forty-sixth (46th) week of the year, 1938.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

By *Lee Shoptaw*
Lee Shoptaw

LS:RS

APPROVED JAN 4, 1940

George Mann
ATTORNEY GENERAL OF TEXAS

