

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 220

TO: R. Fuller Martin, Director

FROM: D. G. Ball, Chief Counsel

RE: Interpretation of Sections 96-8(5)k and 96-8(6)g.17 of the Employment Security Law of North Carolina – Orphanages

Inquiry has been made as to whether an orphanage supported and operated by a religious denomination would be exempt from coverage under the Employment Security Law under the 1971 amendments.

Information as to whether such orphanage was exempt from income tax under Section 501(a) of the Internal Revenue Code of 1954 was not available.

Subparagraph (i) of Section 96-8(6)g.17. provides that the term “employment” shall not include:

“17. For the purpose of paragraphs j and k (of subdivision (5) of this section), the term ‘employment’ does not apply to services performed (i) in the employ of a church or convention or association of churches, or an organization which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;”

“Subparagraph (i) – As used in this subparagraph, the word ‘church’ is used in its limited sense and is synonymous with an individual ‘house of worship’ maintained by a particular congregation. ‘Convention’ and ‘association’ refer to formal and informal groups of churches, clergy or laymen, whether of a continuing nature or meeting periodically, whose purpose is primarily concerned with religious and denominational matters of the group or groups represented. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered. Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a motivate or house of study training candidates to become

members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered under this subparagraph, to be operated primarily for religious purposes.” (Reference – Draft Legislation, Public Law 91-373, H. R. 14705, Explanatory Commentary, U.S. Department of Labor, Manpower Administration, Unemployment Insurance Service, page 27)

Thus, it can readily be seen that the orphanage would not be exempt from coverage under the Employment Security Law effective January 1, 1972, in that it is not considered to be operated primarily for religious purposes.

If an orphanage can meet the test as set out in G.S. 96-8(5)k., then it would be covered if it had as many as four or more individuals in employment for twenty weeks or more in a calendar year. Otherwise, G.S. 96-8(5)a, would apply making coverage if the employing unit had one or more for twenty weeks, etc. (See Interpretation No. 208.)

Adopted as an official Interpretation of the Commission on November 16, 1971.