

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 231

TO: R. F. Martin, Director

FROM: D. G. Ball, Chief Counsel

RE: Interpretation of the Employment Security Law of North Carolina – Nonprofit Organizations: (1) Sections 96-8(5)a., 96-8(5)k., and 96-11(c)(1) – Employer and (2) Section 96-9(d) -Method of Financing

1. Question: Can a nonprofit organization held liable under 96-8(5)a, elect to make payments by way of reimbursement in lieu of contributions?

Answer: No. G.S. 96-9(d) provides that for the purposes of this paragraph a nonprofit organization is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (see Interpretation 208 for detailed explanation as to coverage). If the nonprofit organization meets the test and is covered under G. S. 96-8(5)k., then under G.S. 96-9(d)(1)b., it may elect to make payments by way of reimbursement in lieu of contributions.

If a “nonprofit organization “does not meet the test for coverage under G.S. 96-8(5) k., then it becomes an “ordinary” employing unit and, under G.S. 96-8(5)a., has no election and must pay contributions. We are assuming, of course, that the employing unit had within the current or preceding calendar year one or more employees in 20 different calendar weeks or more or had in any calendar quarter in either the current or preceding calendar year paid for services in employment wages of \$1,500 or more.

2. Question: Can a nonprofit organization failing to meet the conditions of 96-8(5)k., be held liable under 96-8(5)a?

Answer: Yes. (See Interpretation No. 208 and answer to No. 1 above.)

3. Question: Can a nonprofit organization which meets the conditions of 96-8(5) k., but not having as many as 4 or more individuals in employment in 20 calendar weeks or more voluntarily elect coverage under G.S. 96-11(c)(1)?

Answer: Yes. A nonprofit organization meeting the conditions of G.S. 96-8(5)k., but not having as many as 4 or more employees in 20 different weeks in the current or preceding calendar year, may elect coverage under G.S. 9-11(c)(1) with written approval of such election by the Commission.

It should be noted that under G. S. 96-11(c)(3) any political subdivision of the state operating a hospital or institution of higher education may elect coverage under the Act without having to have the approval of the Commission. If election is made, the statute requires payments in lieu of contributions. It should also be noted that all such hospitals or institutions of higher education owned and operated by the political subdivision (city or county) of the state must be covered. For example, a city operating two or more hospitals cannot voluntarily elect to cover just one of its hospitals.

4. Question: Can an employer voluntarily liable under No 3 above elect to make payments by way of reimbursement?

Answer: No. G.S. 96-11(c)(1) provides that any employing unit not otherwise subject to the Employment Security Law may elect coverage with the consent of the Commission, and such employing unit becomes an employer subject thereto to the same extent as all other employers. We are of the opinion that this means that the employing unit must pay the contributions at the standard rate in the same manner as “all other employers.” Therefore, under this circumstance, there is no choice.

Adopted as an official Interpretation of the Commission on December 21, 1971.