State of North Carolina
Department of Labor
Division of Occupational Safety & Health
319 Chapanoke Road • Raleigh, NC 27603-3432
1-800-LABOR-NC or (919) 662-4588 • FAX (919) 662-4582

Harry E. Payne, Jr.
Commissioner

Charles N. Jeffress
Deputy Commissioner/ Director

October 4, 1995

Mr. Joe Simpson
North Carolina Department
of Correction
831 West Morgan Street
P.O. Box 29540
Raleigh, North Carolina 27626-0540

Dear Mr. Simpson:

I have received your September 14, 1995 letter related to safety and health complaints made by inmates. Our response to an inmate's complaint is dependent on an inmate's meeting the definition of employee as included in the Occupational Safety and Health Act of North Carolina. In making this determination we rely on the attached opinion issued by the Attorney General's Office.

The opinion states that prisoners who are not on work-release are not employees within the meaning of the Act. For this reason, the Division of Occupational Safety and Health only investigates complaints from inmates regarding any work release assignments they may have. Any investigation of complaints made by covered prisoners would be conducted in the same manner as other complaints received by the Division.

Complaints by inmates who are not on work release are evaluated to determine if Correction employees are exposed to the hazards alleged in the complaint. If so, our response takes the form of a phone call or letter to Correction addressing the alleged hazards.

If I can provide you with addition insight into our procedures, do not hesitate to contact my office.

Sincerely,

Charles N. Jeffress

CNJ:swh
attachment

North Carolina Department of Correction
831 West Morgan Street • P. O. Box 29540 • Raleigh, North Carolina 27626-0540
James B. Hunt Jr., Governor Franklin Freeman, Secretary

September 14, 1995

Mr. Charles Jeffress, Deputy Commissioner
North Carolina Department of Labor
Occupational Safety & Health Division
319 Chapanoke Road, Suite 105
Raleigh, NC 27603-3432

Dear Mr. Jeffress:

As the final quarter of the calendar year approaches, I am again making plans for an informational letter which will be sent to all Department of Correction Safety Representatives. One of the issues I hope to incorporate in this letter is NCOSH's procedure for responding to complaints made by inmates. While we have discussed this issue verbally, and I have heard other Department of Labor personnel explain the procedures, I want to ensure that the information I send out is correct.

If you could have someone write a brief description of the procedure for responding to inmate complaints and forward that to my office, I would be most appreciative. This would ensure that I do not misstate the Department of Labor's position on responding to inmate complaints.

If there is a difference in response procedures dependent on the work status of the inmate, or the agency, division, municipality or private employer they might be working for, then please include that differentiation in the procedure description.

I am most grateful for your kind attention to this request and hope to hear from you in the near future.

With kindest regards, I am

Sincerely,

Joe Simpson
Director, Safety & Environmental Health

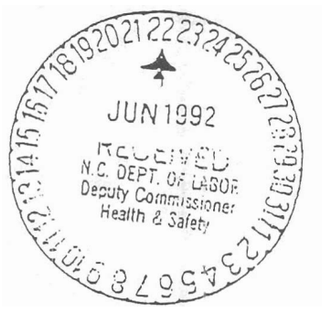
JS/abb

cc: W. L. Kautzky, Assistant Secretary, DOC

L. THORNBURG
RNEY GENERAL

State of North Carolina

Department of Justice
P.O. BOX 629
RALEIGH
27602-0629



--MEMORANDUM--

TO: Michael D. Ragland
Deputy Commissioner for Safety and Health

THRU: Ralf F. Haskell RFH
Special Deputy Attorney General

FROM: H. Alan Pell HP
Assistant Attorney General

DATE: June 16, 1992

SUBJECT: Applicability of the Occupational Safety and Health Act to North Carolina to State Prisoners

ISSUE: Whether the Occupational Safety and Health Act of North Carolina, G.S. 95-126 et seq., is Applicable to State Prisoners.

ANSWER: The OSH Act is applicable to those prisoners on work-release pursuant to G.S. 148-33.1, while they are at their place of employment in the free community.

DISCUSSION

A primary rule in statutory construction is that where a statute does not need interpretation, or has words which have a definite and precise meaning, the statute should not be interpreted. Courts will generally read statutes and understand them in accordance with the most obvious import of their language without resulting to subtle and forced construction for the purpose of either limiting, or extending, their operation. State v. Carpenter, 173 N.C. 767 (1917). In construing a statute, the words that are used should be given their ordinary meaning, according to the common usage at the time the statute was enacted, unless it appears from the context that they should be taken in a different sense. Abernethy v. Board of Commissioners, 169 N.C. 631 (1915).

Although the Act does not reference "prisoners," it does provide that its standards and regulations apply to "all employers and employees," with six exceptions. G.S. 95-128. The exceptions primarily specify "employees" whose working environment is subject to the regulation by various federal provisions. Thus, a primary--and dispositive--determination whether a "worker" is covered by the Act is whether he is an "employee" who does not fall within the six exceptions to the Act.

The term "employee" is statutorily defined as "an employee of an employer who is employed in the business or other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer." G.S. 95-127(9). The phase that an employee is "an employee of an employer" is more than mere circularity in definition. In order to be an "employee," one must be in that class of worker who has an "employer" within that word's statutory definition. The term employer, in pertinent part, is defined as "a person engaged in a business who has employees . . . ." G.S. 95-127(10).

It is the declared public policy of the State of North Carolina that "all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them." G.S. 148-26. These work assignments, however, are not for the benefit of the Department of Correction; they are specifically designated as being for "the public benefit." Thus, prisoners who work while in prison are not working for an employer with a "business purpose."

Correctional officers, in contrast, are State employees, work within prison facilities, and further the Department of Correction's "business" of providing custodial supervision. Such officers are clearly covered by G.S. 95-127(10), which provides that the term "employer" applies to political subdivisions of the State. The Department of Correction, however, is not an "employer" within the meaning of the Act as to inmates, and, consequently, prisoners are not "employees" within the meaning of the Act. As above noted, words should be given their ordinary meaning, according to the common usage at the time, unless there appears some reason why they should not. Based upon the statutory definitions, using the ordinary meaning of the term "employee" is appropriate, and such meaning in its common usage does not support including "prisoners" as employees. Therefore, all prisoners--in the absence of any further statutory authority--would be excluded from coverage of the Act.

The legislature did pass subsequent legislation which ameliorates the exclusion of prisoners from the Act, and which provides a further basis for concluding that the legislature did intend to exclude inmates from the Act's coverage. In regard to prisoners on work-release, the law provides that "[t]he State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons. G.S. 148-33.1(e).

A common rule of statutory construction is "expressio unius est exclusio alterius"--the expression of one thing is the exclusion of the other. When certain things are specified in a law, an intention to exclude all others from its operation may be inferred. Black's Law Dictionary, Fifth Edition, 1979. Thus, it may be inferred that the legislature specifically declined to grant to the Department of Labor any authority over the working conditions of inmates who are not "working in the free community" on work-release. The provision, which is an express legislative grant of jurisdiction to the Department of Labor, was passed subsequent to the enactment of the OSH Act. The provisions of G.S. 148-33.1, when read in pari materia with the provisions of the OSH Act, reflect the legislative intent that inmates, not on work-release, are not subject to the coverage of the Act.

The legislature also made it clear that the Department of Labor would have supervisory authority over the "employer" in the free community: "No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system . . . ." G.S. 148-33.1(g). Under the provisions of G.S. 148.33(1), the prisoner attains the status of "employee," is employed in the business of his "employer," and the employer is subject to the coverage of the Act.

Although not essential for a determination of the issue presented, it is significant that there are other provisions which would provide a legal basis for regulating the working conditions of inmates. Various jurisdictions, including North Carolina, have addressed inmate working conditions under federal constitutional provisions, i.e., the Eighth Amendment. A constitutional analysis, as opposed to a State regulatory framework, is consistent with the statutory mandate that inmates work: the Eighth Amendment forbids cruel and unusual punishment. The federal courts have held that fire and occupational safety concerns are legitimate concerns under the Eighth Amendment. French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985), and cases cited therein.

In determining whether working conditions failed to meet constitutional standards, it has been noted that a state is not constitutionally required to observe all the safety and health standards applicable to private industry. Sampson v. King, 693 F.2d 566 (5th Cir. 1982), and cases cited therein. Although safety standards may considered when determining whether conditions are above constitutional minima, at least one federal court has noted that the Eighth amendment did not "constitutionalize" the state fire code, or require complete compliance with numerous OSHA regulations. French v. Owens, 777 F.2d at 1257.

SUMMARY

Prisoners who are not on work-release are not employees within the meaning of the Act; therefore, they are not covered by the provisions of the Act. Prisoners who have claims of unsafe working conditions have claims under the Eighth Amendment, and State regulations are relevant in determining whether the working conditions meet minimum constitutional standards.

cc: James P. Smith
Special Deputy Attorney General
Corrections Section