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(R75-236)

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January 22, 1976

Honorable Manuel Pena  
State Senator, District 22  
P.O. Box 6482  
Phoenix, Arizona 85005

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**ARIZONA ATTORNEY GENERAL**

Dear Senator Pena:

This is in response to your letter of April 10, 1975, in which you asked the following three (3) questions concerning P.L. 93-567, Supplemental Unemployment Act (SUA):

1. Is A.R.S. § 23-771.4 in conflict with P.L. 93-567, and should not the federal statute prevail?
2. If the Arizona law is not in conflict with the Federal law, may D.E.S., by administrative decision provide benefits under S.U.A. to commuters?
3. Is the Arizona statute discriminating against legal aliens and not providing them full protection under the law in view of the fact that these legal aliens are eligible for benefits in at least three other states?

For the reasons hereinafter set forth, we believe that the Arizona law does apply, that it is not in conflict with either Federal law or the United States Constitution and, accordingly, that S.U.A. benefits would not be available to commuters until such time as the Arizona law is amended to that effect.

A.R.S. § 23-771 is the section of Arizona's Employment Security Law applicable to determining eligibility for unemployment insurance benefits. Paragraph 4 of § 23-771 requires that an applicant for U.I. benefits reside in the state at the time he registers for work and files a claim



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for benefits, or is residing in another state of the United States or a foreign country which has entered into reciprocal arrangements with D.E.S., as provided for in A.R.S. § 23-644. The pertinent language of § 23-771 is recited below:

He is residing in this state at the time he registers for work and files a claim for benefits or is residing in another state of the United States or a foreign country which has entered into reciprocal arrangements with commission as provided by § 23-644. A.R.S. § 23-771.4 (Emphasis ours)

Thus, in the absence of any reciprocal arrangement with Mexico, there can be no SUA benefits paid to aliens residing in that country.

While the Arizona statute may yield a different result than that of other states, there, nevertheless, exists no conflict with SUA or any other federal statute.

The latitude granted to the states in the administration of their unemployment insurance programs is exemplified by the following statement in revision number 3 of the Comparison of State Unemployment Insurance Laws issued by the United States Department of Labor.

The Federal law contains no requirements concerning eligibility and disqualification provisions except the labor standard provisions. Each state establishes its requirements which an unemployed worker must meet to receive unemployment insurance.

The fact that the Federal government desired to retain such a degree of state latitude in the SUA program is shown by the promulgation of SUA Reg. 619.10. Therein, the Department of Labor stated that its interpretation of SUA was that State law would govern the administration of the program except where the result would be inconsistent with some provision of the Act (SUA). No contrary federal provision appearing, the Arizona statute must be presumed to be valid.

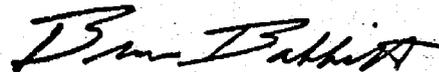
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Finally, it should be noted that it is beyond the power of the Department of Economic Security to extend SUA benefits to non-resident aliens by administrative action. An administrative regulation or decision which attempted to ignore or waive the above-quoted provisions of A.R.S. § 23-771.4 would be invalid as an improper usurpation of legislative authority.

Of some consequence to the above discussion is a recent action taken by a subcommittee of the Ways and Means Committee of the United States House of Representatives. On September 22, 1975, the Subcommittee on Unemployment Compensation agreed to a proposal to extend U.I. benefits to agricultural workers of employers with four or more workers in 20 weeks, or who paid \$5000 or more in wages in any calendar quarter. However, in accepting this proposal, the subcommittee specifically excluded non-immigrant alien agricultural workers from coverage for two years. While the subcommittee's action is not, of course, binding on the Congress as a whole, I include it in this letter as indication of Congressional opinion in this area and of the direction future legislation may take.

Please let me know if we can be of further assistance.

Sincerely,



BRUCE E. BABBITT  
Attorney General

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