

## Opinion No. 50-5309

July 17, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. O. J. Holder, Assistant Educational Budget Auditor Office of State Comptroller Santa Fe, New Mexico

{\*165} Receipt is acknowledged of your letter dated June 13, 1950 requesting an opinion as to whether or not it is legal to pay insurance premiums covering all employees in the various school districts or whether it should be limited to those in hazardous work. The pertinent part of Section 57-903 of the 1941 Compilation (Pocket Supplement) reads as follows:

"Provided, however, that the state, counties, cities, towns, school districts, drainage irrigation or conservancy districts, and public institutions and administrative board thereof shall not be required to give such bond, security, or undertaking."

This statute specifically includes the state, and each county, city, town, school district, drainage, irrigation, or conservancy district and public institutions and administrative wards thereof, employing workmen in {\*166} any of the extra hazardous occupation or pursuits named or described in the act as coming under provisions of the act, and where there are employed therein as many as four workmen.

You will note that the last paragraph of Section 57-903 of the 1941 Compilation, (Pocket Supplement), specifically provides that state, county, cities, towns, school districts, drainage, irrigation or conservancy districts and public institutions and administrative boards thereof shall not be required to give such bond, security or undertaking.

As to whether it is legal to pay such insurance premiums covering all employees or whether it should be limited to those in hazardous work, it is my opinion that the payment for the insurance is a matter of good business policy, to be determined by you or the board or person in charge, but such payment should be limited to those workmen doing extra hazardous work.

Section 57-910 of the 1941 Compilation enumerates the extra hazardous occupations and reads as follows:

"The extra-hazardous occupations and pursuits to which this act are (is) applicable are as follows: Factories, mills and workshops where machinery is used; foundries, blast furnaces, mines, oil wells, gas works, natural gas plants, water-works, reduction works, breweries, elevators, dredges, smelters, power works, laundries operated by power, quarries, engineering works, logging, road building and construction, lumbering and saw mill operations, street railways, buildings being constructed, repaired, moved, or demolished; telephone, telegraph, electric light or power plants or lines, steam heating

or power plants; bridge building, railroad construction work, but shall not include railroad construction work, of any character when done by the owner or operator of any railroad; and all employment wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on; and each of which employments above named, including all employees of telephone and telegraph companies, is hereby determined to be extra-hazardous, in which, from the nature, conditions or means of prosecution of the work therein required risks to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable. All duly elected or appointed peace officers of the state, counties or municipalities, and the warden and all guards employed at the state penitentiary shall be deemed to be following extra-hazardous occupations and to be within the provisions of this act. This act shall not apply in any case where the injury occurred before this act takes effect, and all rights which have accrued by reason of any such injury prior to the taking effect of this act shall be saved the remedies now existing therefor."

For your information and as far as school districts are concerned, the teaching of chemistry should also be classified as an extra hazardous occupation.

I also want to call to your attention the case of Schofield vs. Lordsburg Municipal School District, reported in 53 N.M. 249. Our Supreme court in that case held that a workman employed in carpenter work in repairing of school buildings was engaged in "extra hazardous employment" within the purview of the compensation act, so as to be entitled to compensation though at the time of {*\*167*} injury he was hanging venetian blinds.