

Opinion No. 53-5703

March 16, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. Edwin L. Mechem Governor, State of New Mexico Santa Fe, New Mexico

{*95} In your letter dated March 14, 1953, you state that the Labor Commissioner is seeking to require all State offices, agencies and institutions to comply with the provisions of Section 57-401, NMSA 1941 Comp., Section 1, Chapter 148, Laws of 1933 and other sections following, requiring them to report under the provisions thereof. You request an opinion concerning the applicability of this section to be State offices, agencies and institutions.

The 1933 Legislature passed Ch. 145, Laws of 1933, pertaining specifically {*96} to employees of the State of New Mexico or any department or institution thereof or to counties and municipalities or other political sub-division of the State. The same Legislature, by Ch. 148, Laws of 1933, passed an act pertaining to female employees of any industrial or mercantile establishment, hotel, restaurant, cafe or eating house or any industry or office. The same Legislature passed Ch. 149, Laws of 1933, pertaining to male employees of such businesses or establishments. All three of these laws were approved on the same day, March 15, 1933, and from the fact that Ch. 148 specifically covered employees of the State, its departments and institutions while the other two chapters covered male and female employees of private enterprises, it is apparent that Chapters 148 and 149, Laws of 1933, were not applicable nor intended to be applicable to State employees.

By Ch. 198, Laws of 1947, all of Ch. 148, Laws of 1933, regulating the hours of State employees, was repealed.

By Section 2, Chapter 7, Laws of 1935, passed subsequent to the 1933 law, the Governor was authorized, subject to the approval of the State Board of Finance, to fix hours of labor in each of the State offices, Departments or institutions. This law, in effect, superseded the 1933 Act and when the 1933 Act was repealed in 1947 there is no question whatever but that Section 10-402 of the 1941 Comp., p.s., being Section 2, Chap. 70, Laws of 1935 as amended, is the only law pertaining to hours of State employees.

It is true that Section 19, Article 20, New Mexico Constitution, provides that "8 hours shall constitute a day's work in all cases of employment by or on behalf of the State or any county or municipality thereof. However, in two opinions this office, years ago, held that this constitutional provision is not self-executing. (Atty. Gen. Repts., 1931-32, p. 73 and p. 127).

In view of the foregoing, it is the opinion of this office that the State Labor Commissioner has no jurisdiction over State offices, departments or institutions relative to the employees thereof and has no authority to require such State offices, agencies and institutions to comply with the provisions of the laws pertaining only to private businesses and industry and the employees thereof.