

## **Opinion No. 57-173**

July 17, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,  
Assistant Attorney General

**TO:** Mr. Anderson Carter, State Representative, Portales, New Mexico

### **QUESTIONS**

#### QUESTIONS

An establishment where food drink is served, wholly separate in ownership and control, jointly occupies premises with a drugstore. Does the restaurant have to pay a 65c or a 75c minimum wage under the Minimum Wage Law?

#### CONCLUSION

Under the above facts, the above establishment may pay 65c per hour under the Minimum Wage Law.

### **OPINION**

#### ANALYSIS

Please note the change in the question in order to make it conform to the facts as this office understands them to be.

Section 2 (b) of Chapter 200, Laws of 1955, defines "employer":

"Employer includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing four or more employees at any one time, . . ."

The criterion set up by the Minimum Wage Law is employment and not joint occupation of premises. Such a drugstore and restaurant, as above described, cannot, under the statute, be designated as coming under the definition of a single "employer" pursuant to the Act. The fact that the two businesses occupy proximate premises or even the same premises does not make them a single employing unit. The facts, of course, are largely evidentiary in nature. We presume that the two employers may show separate organizational duties -- merely, as an example, to name a few, separate employment records, separate Social Security payments, separate withholding tax filings, separate leasing arrangements, etc.