

Opinion No. 58-143

July 2, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
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TO: Mr. Samuel F. Gray, Chief Supervisor, New Mexico Dry Cleaning Board, P. O. Box
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QUESTION

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If a dry cleaning establishment operates a retail outlet on a commission basis and if all business transacted therein is cash and carry and if no dry cleaning is actually performed at the outlet, should the said outlet be licensed as a "store" or a "branch"?

CONCLUSION

A branch.

OPINION

ANALYSIS

It is our understanding that a certain dry cleaning establishment operates a retail outlet in Hobbs, New Mexico. The person operating the retail outlet receives 15% of the gross business receipts for operating the outlet. The outlet does no dry cleaning and clothes collected are sent to the main plant for service. All business is on a cash and carry basis and there is no pick up or delivery by truck from this place of business. Based on the foregoing facts, we are requested to determine whether this outlet should be classified as a dry cleaning store or as a dry cleaning branch.

We are of the opinion that this outlet should be classified as a dry cleaning branch. Our Legislature has delegated to the New Mexico Dry Cleaning Board the responsibility of regulating the dry cleaning industry. Pursuant thereto the said Board has issued certain rules and regulations pertaining to the licensing of various dry cleaning establishments. The regulations applicable to this Particular inquiry are Rule No. 1, Paragraph 8, Rule No. 2, Paragraph 11a, and Rule No. 2, Paragraph 11b, which states as follows:

"Rule No. 1, Paragraph 8. 'Branch' or 'Branch Store' is a sub-division of a regularly licensed dry cleaning establishment."

"Rule No. 2, Paragraph 11a. It appearing to the Board that many of the numerous dry cleaning outlets now operating under the classification of agencies of licensed dry

cleaning establishments are in fact independent contractors subject to being licensed by the Board pursuant to Paragraph (c), Section 8 of the Dry Cleaning Law; The Board finds that it must require that such outlets register with and be licensed by the Board"

"Rule No. 2, Paragraph 11b. The Board also finds that to properly discharge its obligation 'To supervise and regulate the entire cleaning, dyeing and pressing industry of the State of New Mexico as herein defined; . . .' it must recognize that dry cleaning service is being offered to the public under conditions not originally defined and set out in The Dry Cleaning Law. It has therefore established a new license classification under authority delegated pursuant to Section 9 of the Dry Cleaning Law, for those outlets that do not qualify as agencies of or branch stores of regularly licensed dry cleaning establishments; to be known as Dry Cleaning Stores."

Applying the above mentioned rules to the instant case, we believe the retail operation to be a branch. First the operator operates on a commission basis. Hence, this individual is not an independent contractor. Secondly, the said outlet cleans no clothes nor does it make any pick up or deliveries. The operator of the outlet merely receives clothing, notifies the main establishment where it is cleaned and then returns the cleaning to the customer, for which he or she receives a set commission based on gross sales. The operator does not determine the price to be charged for the dry cleaning services and apparently the relationship between the dry cleaning establishment and the outlet operator could be terminated at will by the owner of the dry cleaning business.

In view of the foregoing, the outlet should be classified as a "branch" rather than a "store".