

## Opinion No. 66-53

May 3, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** John F. Otero, State Labor Commissioner, State Labor & Industrial Commission, 137 E. DeVargas Street, Santa Fe, New Mexico

### QUESTION

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1. Does the Labor Commissioner have authority under the Workmen's Compensation Act to intervene on behalf of the injured worker when a settlement is being negotiated outside of Court?
2. Does the Labor Commissioner have authority to request information on final disposition of cases decided in Court?

#### CONCLUSIONS

1. No.
2. See analysis.

### OPINION

#### {\*65} ANALYSIS

Under the Workmen's Compensation Act, the Labor Commissioner is given certain enforcement powers. Section 59-10-31, N.M.S.A. 1953 Comp., provides that the Labor Commissioner shall have the power to compel an employer to comply with the terms of the Workmen's Compensation Act, and, in the event the employer does not comply with the terms of the Act, he may commence {\*66} an action to compel compliance. In addition, the Commissioner may also conduct hearings in order to ascertain whether or not the person is properly complying with the terms of the Compensation Act. The Commissioner has no other specific authority to enable him to participate in other actions under the Act.

It is true that the Workmen's Compensation Act is remedial legislation; however, it is our opinion that without some specific statutory authority permitting him to intervene in a Workmen's Compensation Act action prior to the matter going to Court, that the Labor Commissioner does not have power to intervene on behalf of the injured worker when a settlement is being negotiated outside of the Courts. Applying the rule of statutory

construction "expressio unius est exclusio alterius", (the expression of one thing is the exclusion of another) it would appear that if the Legislature had intended to give further powers to the Labor Commissioner, it would have done so expressly and not have made only that express grant of power which is contained in Section 59-10-31, supra.

This opinion is also consistent with the holding in the case of **State v. Mechem**, 63 N.M. 250, 316 P. 2d 1069 (1957), in which the Supreme Court of this State held the controversy between an employer and an employee under the Workmen's Compensation Act was a controversy between private litigants. Under that interpretation, it would appear that the two parties to the action would be the employer and the employee and there would be no place in the action for the Labor Commissioner.

It may appear that Section 59-1-9, N.M.S.A. 1953 Comp., authorizes the Labor Commissioner to intervene in such instances. However, it is our belief that intervention as permitted there is clearly with reference to wage claims and not personal injury claims under the Workmen's Compensation Act. This opinion is supported further by Section 59-3-12 and Section 59-3-13, N.M.S.A. 1953 Comp. There a specific procedure is established by which the Labor Commissioner may accept assignments of wage claims and commence actions to collect thereon in the Courts. No such procedure is established for Workmen's Compensation Claims.

The answer to your second question is quite easily arrived at. All matters decided by the District Courts in final judgments in workmen's compensation cases are matters of public record which are open not only to the Labor Commissioner but to all other persons as well. It is our opinion that since this is the case, there would be no need for specific authority to obtain the information contained in final judgments entered in workmen's compensation cases in the District Courts. In addition, under Section 59-10-29, N.M.S.A. 1953 Comp., a specific duty is placed upon all employers to report when the initial payment on a claim has been made.