

Opinion No. 67-100

August 15, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Ricardo M. Montoya Commissioner Labor and Industrial Commission 137 East DeVargas Street Santa Fe, New Mexico

QUESTION

FACTS

Construction work on certain school buildings is being performed for the West Las Vegas Board of Education. The school board is acting as prime contractor. The employees hired as laborers and mechanics are on the payroll of the school board. No sub-contracting in the sense of letting bids on certain labor occurs.

QUESTIONS

1. Must laborers and mechanics hired by a district school board under the above facts be paid minimum wages as set out under the Public Works Minimum Wage law?
2. If the act applies, what sections may the Labor Commissioner apply to assure full compliance with the act?
3. What actions are available to the Labor Commissioner to insure the employee a remedy on his wage claim?

CONCLUSIONS

1. No.
2. See analysis.
3. See analysis.

OPINION

{*146} ANALYSIS

The real question here is whether a political subdivision, under these circumstances, is bound by the public works minimum wage law.

It appears settled that a school district is considered a political subdivision for certain purposes. **McWhorten v. Board of Education of Tatum Independent School**

District, 63 N.M. 421, 320 P2d 1025 (1958); **Water Supply Co. of Albuquerque v. City of Albuquerque, New Mexico**, 9 N.M. 441, 154 Pac. 969 (1898); Opinion of the Attorney General, No. 4, dated January 10, 1955.

The Court in the **McWhorten** case paid:

". . . [T]he school district is a political subdivision of the state created to aid in the administration of education . . ." (63 N.M. [at] 424)

When the political subdivision contracts with another entity to carry out public works, the public works minimum wage rates apply, **City of Albuquerque v. Burrell**, 64 N.M. 204, 326 P2d 1088 (1958); Opinion of the Attorney General, No. 57-125, dated June 10, 1957. This is true because of Section 6-6-6, N.M.S.A., 1953 Compilation (P.S.), which states in pertinent part:

"The advertised specifications for every contract in excess of two thousand dollars (\$ 2,000), to which the state or any political subdivision thereof is a party, for construction, alteration, demolition or repair, or any combination of these, including painting and decoration, of public buildings, or public works, or public roads of the state, and which requires or involves the employment of mechanics or laborers or both, shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the state labor commissioner to be prevailing for the corresponding classes of laborers and mechanics employed on other contract work of a similar nature in the state or locality, and every contract based upon these specifications shall contain a stipulation that the contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications."

It is the opinion of this office that the arrangement the school {**147*} is operating under is not contracting as intended under the above section. Obviously, two parties -- A as contractor, and B as political subdivision -- are contemplated by the above section. The facts of your situation reveal one party (the school board) acting in both capacities. One legal entity cannot contract with itself under the above section.

The employees on the payroll of the school board may not therefore, avail themselves of the above section. However, a subcontract, let by the prime contractor, would require a predetermination of wage rates if the elements in the above section are satisfied.

The answer to your first question is No. It is therefore unnecessary to reach the other two questions.

By: Donald W. Miller

Assistant Attorney General