

**Opinion No. 16-3902**

August 2, 1916

**BY:** ROBERT C. DOW, Assistant Attorney General

**TO:** Miss Margaret Reeves, Director, Bureau of Child Welfare, Santa Fe, New Mexico.

This Office is in receipt of your request for an opinion involving a construction of § 3, Chapter 79, Laws of 1925, relative to employment of children.

You state that you are in receipt of a request from a city school superintendent, which request is as follows:

"Since the visit of your representative a few days ago, I have had numerous requests for Labor Permits for boys to deliver newspapers. These boys are required to begin their work before seven in the morning, in fact before five o'clock, and sometimes, required to work until after seven in the evening. However, since this work only requires a few hours a day, the men in charge believe that these boys should be allowed to work. However, the Law says, Sec. 3, no child shall continue work after the hour of seven in the evening. I have been repeatedly asked to issue such permits, but have referred to the law, and your department. Will you kindly advise me what reply I should give them?"

§ 3, Chapter 79, Laws of 1925, is as follows:

"No child under the age of sixteen years shall be employed or permitted to labor at any gainful occupation for more than forty-four hours in any one week, nor more than eight hours in any one day, except under special circumstances to be determined by the officer who issued the permit, but in no case shall such child be permitted to work more than forty-eight hours in any one week nor shall such child begin work before the hour of seven o'clock in the morning nor continue after the hour of seven o'clock in the evening of any one day."

You will note that said section of our statute, after prohibiting child labor for more than forty-four hours in any one week or more than eight hours in any one day, except under special circumstances to be determined by you, the law then states "but in no case shall such child be permitted to work more than forty-eight hours in any one week, nor shall such child begin work before the hour of seven o'clock in the morning, nor continue after the hour of seven o'clock in the evening of any one day."

The exception contained in the above law authorizing you to alter the rule under special circumstances contemplates that such discretion be used in cases of children under the age of sixteen years who are permitted to labor forty-four hours in any one week and eight hours in any one day.

It is clear, however, that such exception does not authorize you to issue a permit allowing children to begin work before the hour of seven o'clock in the morning, or to continue work after the hour of seven o'clock in the evening; after providing that you may use your discretion in certain cases, the law then employs the positive terms "but in no case \* \* \* shall such children begin work before the hour of seven o'clock in the morning, nor continue after the hour of seven o'clock in the evening of any one day."

You will note, however, that there are certain exceptions provided in the following sections of the statute. In cases where children are working for their own parents or guardians on premises or land owned or occupied by them, provided such work is not dangerous to life, limb or health of such children, and provided, such labor is not performed during the hours which public schools in the district in which the child resides are in session; the law also makes an exception in cases of a singer or musician in a church, school, academy, concert or theatrical exhibition in certain cases; the law provides also that boys working as messengers for telegraph, telephone, or messenger companies shall not begin work before seven o'clock in the morning, and shall not work after eight o'clock at night.

No doubt the provisions of the above law will work a hardship in certain cases where boys are earning their own livelihood for themselves and possibly their families, but the law is positive in terms and, no doubt, the good features of such law will more than compensate for any hardship or inconvenience wrought in any exceptional cases.