Opinion No. 31-152

May 9, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. Ralph E. Davy, Labor Commissioner, Santa Fe, New Mexico.

*{*73}* Your letter of May 6th, calls for an opinion as to whether or not Section 19 of Article 20 of the Constitution of the State of New Mexico is enforceable in so far as it has application to Federal Aid Projects in this state.

This section referred to reads as follows:

"Eight hours shall constitute a day's work in all cases of employment by and on behalf of the state or any county or municipality thereof."

Our search for a construction of this section by our Supreme Court has lead to a negative result. A number of other states have similar constitutional provisions but so far as we have been able to find these states have enacted legislation to enforce these provisions and there seems to be no interpretation or construction of the constitutional section alone, by the courts of last resort.

As a general rule of law contracts are presumed to include, by way of implication, any provisions of law, either constitutional or statutory, which apply to the subject matter of the contract and of course contracts repugnant to provisions of law are unenforceable unless some question of estoppel has entered into the controversy.

But so far as the matter at hand is concerned it is our opinion that this section is intended to limit state, county and municipal employment to eight hours per day, though it is possible to construe it as fixed minimum day.

Federal Aid Projects and contracts relating thereto are probably within the classification of this provision of the constitution and if employees of such contractors are working more than eight hours per day, there may be a breach of contract by the employer, depending upon the construction placed by the Court upon the constitutional provision above quoted.

If the courts hold that the provision is a limitation of time, the other party to the contract, the State Highway Department or Commission, might declare the contract breached. On the other hand, if the court says that said provision merely fixed a minimum number of hours as a days labor, no action could be taken whatever.

In no event could any action be taken under the present status to inflict a penalty for violation of the said section for the reason that it is not self executing and until the legislature has passed an enactment inflicting a penalty for a violation, no action other

than one for possible breach of contract, a civil action of course, can be taken. The result of such litigation would of course depend upon the construction of interpretation placed upon this provision by the court.

*{*74}* Trusting the above will sufficiently answer your inquiry, we are,

By Frank H. Patton,

Asst. Attorney General