

Opinion No. 31-228

August 1, 1931

BY: E. K. Neumann, Attorney General

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

{*93} Your letter of July 28th requests an opinion as to whether or not those engaged in undertakings for gain are compelled to cease operation on what are termed legal holidays, and what the right of employees are in the matter of observing said legal holidays.

Section 13-401 of the 1929 Code enumerates New Years Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day and Christmas, and any other days which may hereafter be designated as such by the legislature of the state, or any day appointed or recommended by the Governor of the State or President of the United States as a day of thanksgiving or fasting and prayer or other religious observance, shall, for our banking purposes, be considered legal holidays.

Chapter 65 of the 1929 Code designates Arbor Day as a school holiday; Armistice Day as a legal holiday; Washington's Birthday as a legal holiday and Columbus Day, the twelfth of October as a legal holiday, other than that we are unable to determine that any other days have been set aside as legal holidays.

The general rule regarding the operation and effect of holidays or days being so designated, is as follows:

"A legal holiday, other than Sunday, has the effect of a holiday only as to those acts and {*94} transactions which are dedicated in the statute establishing the day, accordingly is it held that with the exception of matters concerning which the statute provides that day shall be treated as Sunday any act done on that day is as effective as if done on any other day. As a general rule there are no compulsory holidays having the effect of suspending the transaction of private business in the absence of statutory provision to that effect. A provision that any given holiday shall be considered as Sunday in the transaction of business in the public offices of the State or of the counties of the State does not prevent the transaction of private business on that day. So, where the statute enumerates the private act which may not be performed on designated holidays, all transactions not within the statutory prohibition may be carried on as on any other day." 27 Cyc. at pages 762 and 763.

"And sometimes statutes, having for their object the prevention of business, are construed as permissive and not mandatory as to acts following within the terms of the statute." 29 Cyc. at page 762.

Such being the general rule, in this state, our statute providing that only banks, state offices and public schools shall be closed, all other business may remain open, and employees are subject to work upon that day, according to their contract of employment. This is our opinion, after careful study of your question and the authority which we have been able to find.