

Opinion No. 31-299

October 30, 1931

BY: E. K. Neumann, Attorney General

TO: Dr. H. L. Kent, Pres. New Mexico Agriculture & Mechanic Arts, State College, New Mexico.

{*114} Your letter of October 23rd, 1931, calls for an opinion as to whether the workmen's compensation insurance as established under our workmen's compensation law applies to state educational institutions and whether such institutions are required to carry such insurance for men employed by the institution.

Under Section 156-102, New Mexico Statutes Annotated, 1929 Compilation, we do not believe it can be successfully contended that a state educational institution is not under the provisions of the workmen's compensation act, as this act specifically mentions public institutions among the other classifications set forth therein.

As to the second part of your question, we do not believe it necessary to carry the insurance provided in the act if you desire to take advantage of that section. This office has heretofore advised one of the other educational institutions in this state, however, that it is the better policy to carry such insurance for the reason that such institution may not have any money or funds out of which to pay compensation to an injured worker.

You also wish to know if this act applies to the employees of the institution on a farm or ranch, and by such employees you mean men doing ordinary farm work using such machines as tractors, mowers, threshers and machines of a similar description. Under our act, farm and ranch work is not specifically mentioned. However, a broad construction would place such employment under the definition of "work shop" and "mill". Under the statute {*115} a "work shop" means any yard, power driven machinery is employed and manual labor is exercised incidental to the process of making, altering, repairing, printing, or ornamenting, finishing or adapting for sale or otherwise any article or part of an article, over which **premises**, room or **place** the employer of the person working therein has the right of access or control.

A "mill" is defined as being any plant, premises, room or place where machinery is used, any process of machinery, changing, altering, or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunders, saw mill, sash factory or other work in the lumber industry.

We are, of course, unable to state definitely that our Court would hold that a farm employee using the machinery mentioned by you would come within either of these definitions.

In some states these cases have been decided because of certain statutory provisions and in other cases it has been held that farm labor in certain instances is within the compensation act.

You also wish to know if the act applies to employees of the custodian's force who take care of firing furnaces and the heating plant, repair electric wiring, plumbing, carpenter work, etc.

In our opinion employment of this nature would fall within the class of extra-hazardous, as defined by our act, unless it is of such a nature as to come within the term "building work", which is defined by our statute in Section 156-112, to be any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances, except residences and structures being built for the private use of the owner on farms, ranches or residence lots and not under contract.

As to whether the act applies to members of the faculty, chemists, biologists, etc., we would say that the act does apply. If the employment is of such a nature as to require the use of dangerous, explosive or inflammable materials. It is the contract of employment that is usually the basis for decision in cases of this kind and a number of courts have held that manual labor is not necessarily a requisite for bringing an employee within the terms of the workmen's compensation act. As heretofore stated, we, of course, do not know what our own Supreme Court would hold upon these matters and we can only answer your questions in the exercise of our own individual judgment.

By Frank H. Patton,

Asst. Attorney General