

Opinion No. 41-3701

January 27, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Jennie M. Kirby, Director Department of Public Welfare Santa Fe, New Mexico

{*29} This will acknowledge receipt of your letter of the 20th, wherein you inquire as to whether or not a boy fourteen years of age, engaged in the delivering of newspapers, is a messenger of goods or messages, so as to fall under the restricted hours of labor as {*30} set out in Chapter 79, Section 6, Session Laws of 1925 (Section 80-112, New Mexico Statutes, Annotated, 1929 Compilation.)

The law under Section 80-112, 1929 Compilation, reads as follows, to-wit:

"No boy under the age of sixteen years shall be employed or permitted to labor as a messenger for a **telegraph, telephone, or messenger company**, in the distribution, transmission or delivery of goods or messages before seven o'clock in the morning or after eight o'clock in the evening of any day; and no female under the age of twenty-one years shall be thus employed at any time."

Chapter 79, Section 3, of the Session Laws of 1925, the same being Section 80-108, New Mexico Statutes, Annotated, 1929 Compilation, reads as follows, to-wit:

"No child under the age of sixteen years shall be employed or permitted to labor at any gainful occupation for in any one week, nor more more than forty-four hours 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."

At first blush, it might seem that this last quoted section of the law would be in conflict with Section 80-112 of the 1929 Compilation, first above quoted. Perhaps it is, but in view of the fact that both of the sections were enacted at one and the same time, I am of the opinion that Section 80-112 of the 1929 Compilation, should be regarded as an exception to Section 80-108 of the 1929 Compilation. ((Sec 59 C. J. 999, Section 596).

I do not believe that Section 80-104, 1929 Compilation, is in effect at this time because of Section 80-108, 1929 Compilation, which was enacted some four years subsequent to Section 80-104.

In view of the foregoing, I am of the opinion that the youth about whom you speak would fall under the restricted hours of labor as set out in Section 80-108 of the 1929 Compilation, and not under Section 80-112, of the 1929 Compilation.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General