

Opinion No. 43-4388

October 4, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John J. Dempsey, Governor of New Mexico, Santa Fe, New Mexico

We are in receipt of your letter of September 30, 1943, and the inclosed copy of a letter from the Office of Defense Transportation, in which the Deputy Director asks what are the legal hours of work for women employed on trains in the State of New Mexico.

Chapter 148, Laws of 1933, as amended by Chapter 196 of the Laws of 1939 (Secs. 57-401 to 57-412 of the 1941 Compilation) does not cover the hours of labor for women engaged in transportation. Thus, while Chapter 148 of the Laws of 1933, repealed Chapter 180 of the Laws of 1921 by implication, as to the balance of the provisions of that act, yet, as to women employees engaged in transportation, Chapter 180 of the Laws of 1921 is still in force.

Section 3 of Chapter 180 provides as follows:

"No female shall be employed in this State by any person, firm or corporation engaged in any express or transportation or public utility business or by any common carrier more than nine hours during any one day or more than fifty-six hours during any one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than nine hours during the twenty-four hours of any day and mealtime shall not be included as a part of the working hours of the day."

Section 6 thereof provides as follows:

"Nothing in Section 3 of this act shall be construed so as to prevent work in excess of nine hours a day in emergency cases, provided that in no one week of seven days shall there be permitted more than sixty hours of labor, and provided that work in excess of fifty-six hours of labor in any one week shall be paid for on a basis of time and one-half for such excess."

And Section 8 thereof provides as follows:

"The provisions of this act shall not apply to any female engaged in interstate commerce where the working hours of any such female so engaged are regulated by any Act of Congress of the United States."

It is noted that Sec. 57-404 of the 1941 Compilation contains a similar exception as to women engaged in interstate commerce.

I find that the hours of labor of all employees engaged in or connected with the movement of trains in interstate commerce are covered by Title 45, Chapter 3, U.S.C.A. While women are not specifically mentioned, yet the term "person" as used therein is sufficiently broad to cover them.

In view of the foregoing, it is my opinion that as to women engaged in interstate commerce as employees of railroads the federal law, being Title 45, Chapter 3, supra, governs, rather than the New Mexico law.

It is further my opinion that women employed by railroads in a strictly local capacity may work not to exceed nine hours in any one day nor more than fifty-six hours during any one week, provided, that in case of emergency such women may work in excess of nine hours, as long as they do not work more than sixty hours in one week of seven days and are paid time and on-half for any work in excess of fifty-six hours.

I am inclosing herewith copy of this opinion for your convenience.

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

By ROBERT W. WARD,

Assistant Attorney General