

**Opinion No. 43-4392**

October 6, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission of New Mexico, P. O. Box 1301, Albuquerque, New Mexico

Receipt is acknowledged of your letter of October 4, 1943, seeking a construction of Section 19 (r) of the Unemployment Compensation Law, appearing as Section 57-822 (r, paragraph 3) of the 1941 Compilation in the biennial pocket parts. This section provides as follows:

"(r) The term 'agricultural labor' includes all services performed \* \* \* (3) in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein."

From your statement of facts it appears that the Hagerman Irrigation Company, a corporation, owns and operates a system of irrigation for farming purposes. Some of the stockholders of this corporation are farmers using the water for irrigation and other stockholders are not farmers so using the water. In addition, some of the water furnished by the corporation is sold to and used by persons who are not stockholders of the corporation.

Exemption statutes are ordinarily construed strictly against the exemption, and a person seeking an exemption from taxation must place himself squarely within the provisions of the exemption statute. In view of the fact that the ditches, canals, reservoirs or waterways used for this irrigation system are not owned and operated by the farmers, but are owned and operated by the irrigation company, a corporation, in my opinion, the requirements of this section are not met and the Hagerman Irrigation Company is not exempt from the provisions of the Employment Compensation Law.

By C. C. McCULLOH,

First Asst. Atty. General