

## Opinion No. 44-4452

February 2, 1944

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

**TO:** Mr. Robert J. Doughtie, State Labor Commissioner, Santa Fe, New Mexico

In your letter dated January 31, 1944, you request an opinion regarding the extra-territorial effect of the Workmen's Compensation Laws of New Mexico in favor of employees who sustain injuries in other states.

Your question is so general, and covers so much territory that it is impossible to answer the same to any definite degree, especially in view of the fact that compensation cases depend to a great extent upon the particular set of facts arising in each case. The question of interstate commerce is also involved in connection with injuries arising in other states, as well as the question of an employer doing business in several states, and the possibility that an injury in another state might come within the compensation laws of the other state primarily.

This question was the subject of Opinion No. 1511, written January 28, 1937 to Mr. F. Charles Davis, who was then the State Labor Commissioner, by Richard E. Manson, former Assistant Attorney General, a copy of which is enclosed for your information. In that opinion it was stated that the question is primarily one of contract and policy of insurance companies, rather than enforcement of the Workmen's Compensation Act by the Labor Commissioner. For that reason no opinion as such was rendered, but the authorities were discussed, and the case of *Kandelin v. Lee Moor Contracting Company*, 24 P. 2d 731, was mentioned.

In that case the Supreme Court of New Mexico, by way of dictum, stated that our compensation laws have no extra-territorial force. However, the statement by the Court was made in connection with the right of the insurance company to be subrogated into the rights of the injured employee where compensation for the injury was paid under the California laws for an injury received in New Mexico. The statement amounts to nothing more than that the laws of New Mexico do not govern in cases arising in other states.

This question has never been directly passed upon by our Supreme Court. However, judging from recent opinions relative to compensation matters, our Supreme Court is inclined to construe our law in a liberal manner in order to protect the injured employee insofar as is legally possible.

In Section 57-902 of the 1941 Compilation it is provided that the state and the various political subdivisions, state institutions and boards employing workmen in extra-hazardous occupations, and every private person, firm or corporation engaged in carrying on for the purpose of business, trade or gain within this state, either or any of the extra-hazardous occupations or pursuits shall come under the act.

In Section 57-912, subsection (1) of the 1941 Compilation, this language is used:

"The words 'injuries sustained in extra-hazardous occupations or pursuit,' as used in this act shall include death resulting from injury, and injuries to workmen, as a result of their employment and while at work in or about the premises occupied, used or controlled by the employer, and injuries occurring elsewhere while at work **in any place** where their employer's business requires their presence and subjects them to extrahazardous duties incident to the business, \* \* \*."

It is apparent that the Legislature did not restrict the act to include only injuries received in this state. The employer must be engaged in business in this state, but it is possible for the injury to be received outside of the state in the course of the employer's business, under the language of Section 57-912, subsection (1) above mentioned.

The general rule, according to the weight of authority, is as follows:

Work done by an employee within the scope of his employment is presumably done to advance the business, although the work may be performed across the border of a state, and any accidents suffered by him while so engaged should be compensated by the business precisely the same as if it were performed within the state boundary, in the absence of clear statutory intention to confine the operation of the act to accidents occurring within the state.

In view of the language used in our Compensation Act, and in view of the tendency of the Supreme Court to give the act a liberal construction, I am of the opinion that should the matter be directly presented to the Supreme Court that the Court would follow the general rule above mentioned, supported by the weight of authority.

By C. C. McCULLOH,

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