

Opinion No. 44-4479

March 13, 1944

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of March 9, 1944, in which you ask our opinion as to whether or not any child under the age of fourteen years can lawfully be employed at a gainful occupation in the State of New Mexico.

Your attention is directed to Section 57-501 of the 1941 Compilation, which provides as follows:

"No child under fourteen (14) years of age shall be employed or permitted to labor at any gainful occupation whatsoever during the hours during which the public schools in the district in which the child resides are in session. No child under the age of fourteen (14) years shall be employed at any gainful occupation when the school of the district in which such child resides is not in session unless such child shall have a permit certificate issued in the manner and by the authority herein directed."

It is noted, by the first sentence of this section, that **during the hours** during which the public schools are in session a child under fourteen years of age may not be employed under any circumstances whatsoever. It is also noted that by the second sentence of this section children under the age of fourteen years shall not be employed when the school **is not in session** unless such child have a work permit. While this section is not absolutely clear, since it could be argued that the language "not in session" means the months when the school is not in session, it appears to me that the intention of the Legislature was plain that the language means the hours during which school is not in session. I reach this conclusion because in the previous sentence the language "hours during which schools are **in session**" is used, indicating that where the language "in session" is used in the second sentence it means the same thing as where previously used. Further, the Legislature, in defining the months during which school is not in session, as is shown by the next section which is part of the same original law, used the language "during the term of the public school."

It is, therefore, my opinion that a child under the age of fourteen years may not, under any circumstances, be employed during the hours during which the school is in session, but that a child under the age of fourteen years may be employed before or after school if a permit is given such child as provided by Section 57-508.

In your letter you question the effectiveness of Section 57-505 as amended by Chapter 112, Laws of 1943, both because the amendment conflicts with previous legislation and because you question its constitutionality.

It is a fundamental rule of statutory construction that a subsequent statute repeals or amends by implication any previous conflicting law. Thus, if there is a conflict between this amendment and any previous law the amendment would be given full force and effect. I have studied this section with care and fail to see any possible grounds upon which it could be held unconstitutional.

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

By ROBERT W. WARD,

Asst. Atty. General