

**Opinion No. 49-5213**

April 27, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Earl Stull, Director Department of Courtesy and Information Box 1666 Santa Fe, New Mexico

{\*38} I am writing in reply to your inquiry of April 18th regarding the ages of personnel to be employed in the Department of Courtesy and Information.

Section 3 of Chapter 125, Laws of 1943, provides as follows:

"They shall be between the ages of 21 and 50 years."

The above provision is a legislative determination of employment policies and practices. The term "shall" when addressed to a public official is mandatory.

"In a statute 'shall' is mandatory and excludes the idea of discretion when addressed to a public official." *Dunn v. Roundy*, 181 N.W. 454.

"The word 'shall' when used in command to public officers is mandatory." *In Re O'Rourk*, 30 N.Y. Supp. 375.

"The word 'shall' in the constitutional provision declaring that all officers shall qualify and enter upon the discharge of the duties of their office within 15 days after they shall have been duly notified of their election or appointment is used in a mandatory sense and denotes command."

It is the opinion, therefore, of this office that the personnel which you may employ must be between the ages of 21 and 50 years.