Opinion No. 51-5414

August 29, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Richard H. Robinson Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

*{*116}* This is in reply to your letter of June 13, 1951, requesting an interpretation for the Eddy County Commissioners of our Workmen's Compensation Law. The particular question propounded was whether or not the County should pay the insurance company, which carries the County's Workmen Compensation policies, a premium based on all employees of the County or on employees engaged strictly in hazardous occupations. The Insurance Company contends that the premium should be based on the entire County payroll if the Insurance Company is to be liable for compensation for all county employees.

In my opinion, the premium paid should be based upon the County payroll for all employees covered by the Act, these being employees for which the Insurance Company would be liable under the policy.

Our Supreme Court, in the case of Koger v. A. T. Woods, Inc., 38 N.M. 241, 31 P 2d 255, ruled that our Workmen's Compensation statute wherein extra hazardous occupations are enumerated, this being § 47-910, N.M.S.A., 1941 Compilation, under the doctrine of "expressio unius est exclusio alterus," must be held to exclude all those occupations not specifically named therein. While in some jurisdictions it has been held that when an employer's principal field of endeavor is one which is enumerated as an extra hazardous occupation that all employees of such employer are covered by the act, whether they individually may be engaged in hazardous work or not, this is not the law in the State of New Mexico. See Rumley vs. Middle Rio Grande Conservancy District, 40 N.M. 183, in which the Supreme Court stated:

"* * *. It is only when employers are engaged in 'occupations or pursuits' declared 'extra hazardous' by section 156-110 that liability attaches under the act for compensable injuries to employees. Nor does it matter that this employer at one time in the same area was, or perhaps at the same time elsewhere may have been, engaged *{*117}* in extrahazardous pursuits as defined in the act. An employer may conduct different departments or types of business, some of which are within the Compensation Act and some of which are not. 71 C.J. 365, § 78, under subject, 'Workmen's Compensation Acts.' * * * *"

Here we are concerned with a County as an employer. When the application of the Workmen's Compensation Act to the State and its political subdivisions is considered, we must look to the special definition of employer as given by § 57-912 (h), N.M.S.A., 1941 Compilation. This section provides:

"'Employer' includes any person, or body of persons, corporate or incorporate, * * * engaged in or carrying on for the purpose of business, or trade or gain any of the occupations or pursuits to which this Act is applicable, and also includes the state and each county, city, town, school district, drainage, irrigation or conservancy district and public institution and administrative board thereof employing workmen under the terms of this Act, although not engaged in carrying on for the purpose of business, trade or gain any of such occupations or pursuit."

Thus, in the case of the State and its political subdivisions, it is necessary to look to the nature of the employment of the individual workman to determine whether or not it comes with the Workmen's Compensation Act. It is my opinion that in a case of a State or its political subdivisions, the Workmen's Compensation Act applies to only those employees engaged in the extra hazardous occupations enumerated by our Workmen's Compensation statute.

In reply to your immediate question, therefore, it is my opinion that the payment of premiums to the Insurance Company, which carries the Workmen's Compensation policy for Eddy County, should be based upon the payrolls for only those employees engaged, or who are likely to engage, in one or more of the extra hazardous occupations enumerated by our statute.