

Opinion No. 53-5744

April 24, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. W. Burrell, Commissioner State Labor and Industrial Commission Santa Fe, New Mexico

{*146} I am in receipt of your letter of April 15, 1953, requesting an opinion whether or not a dental attendant or dental assistant is included under Section 57-401 et seq., N.M.S.A., 1941 Comp., or whether such female employee would be exempt. The Section above cited reads as follows:

"57-401 MAXIMUM HOURS OF LABOR -- OCCUPATIONS SUBJECT AND EXEMPT. -
- No female shall be employed in any industrial or mercantile establishment, hotel, restaurant, cafe or eating house; or in any laundry, or in any office as a stenographer, clerk, bookkeeper or in any other clerical position; or in any place of amusement; or in any telephone or telegraph office, within the state more than eight (8) hours in any one (1) day of twenty-four (24) hours, nor more than forty-eight (48) hours in any one (1) week of seven (7) days. The provisions of this act (§§ 57-401 -- 57-409) shall not apply to hospitals or sanitariums, or to registered or practical nurses wherever employed; or to midwives while engaged in their duties as such."

The position of dental assistant usually more closely approximates that of a **practical nurse**, normally, that it does a position of clerk. The dental assistant aids the dentist in the preparation of patients for dental work. She frequently assists during the progress of the dental work and in the case of more serious types of extractions and dental surgery work she gives injections just as a physician's nurse.

Therefore, it is the opinion of this office that a female dental assistant, if her activities are such as described above and not entirely clerical, comes within the exemptions provided in the statute above quoted. It is our feeling that the provisions of Section 57-401, et seq., do not apply to dental assistants unless the work done by them is entirely clerical or stenographic.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General