

Opinion No. 53-5773

June 30, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: A. M. Frazier Commission Counsel Employment Security Commission P. O. Box 1301 Albuquerque, New Mexico

{*173} This is in reply to your request for an opinion upon the question of whether the laws of the State of New Mexico and specifically Section 57-503 N.M.S.A., 1941 Compilation, as amended, prohibit children under 16 years of age working as baby sitters after 7:00 o'clock in the evening.

Section 57-501 N.M.S.A., 1941 Compilation, as amended, requires that no child under the age of 14 years shall be employed or permitted to labor during the hours which the public schools in the district in which he resides are in session, and that all other periods such child shall obtain a permit before being allowed to work.

Section 57-502 N.M.S.A., 1941 Compilation, as amended, prohibits children between the ages of 14 and 16 from performing any gainful occupation during the school year unless a permit is obtained.

Section 57-503 N.M.S.A., 1941 Compilation, as amended, which is the section which is before us here, in the last sentence, prohibits any child under 16 from continuing work after the hour of 7:00 o'clock in the evening of any one day.

Baby-sitting, as such, does not appear to be a dangerous occupation which is prohibited per se by the act.

Section 57-508 N.M.S.A., 1941 Compilation, as amended, appears to have been amended in 1943 by Laws of 1943, Ch. 122, Sec. 3, page 220, by adding the following:

"* * * Provided further that for and during the time the United States of America shall be at war with any foreign nation and for six months thereafter, the authorities by whom such certificates may be issued as herein provided may issue certificates to work before the hour of 7:00 o'clock in the morning or after the hour of 7:00 o'clock in the evening."

It is clear from this amendment that the Legislature of the State of New Mexico intended that during the war years when there was a scarcity of manpower, to ease the requirements of this law, in order that children coming within the specifications herein might contribute to the war effort. The United States Congress or any other official agency has not officially proclaimed that the war, known as World War II, is terminated. Until such proclamation and six months thereafter such an enactment would have the effect of allowing a child, so specified in the act, to work after the hour of 7:00 o'clock in the evening.

Although this office realizes that the particular crisis for which this amendment was designed has possibly been dissolved, certain of our Federal {^{*174}} Courts have recognized that we are once again embroiled in a conflict with a foreign nation, and as such have interpreted the law in respect to war clauses in contracts that the present Korean conflict comes within the specification of such a war. We do not decide this question herefore the reason that it is not presented.

It is therefore the opinion of this office that under the existing amendments to our law regarding labor of children under 16 years, that it would not now be illegal for a child of this age to perform services after the hour of 7:00 o'clock in the evening.

We trust that this answers your question.

By: William J. Torrington

Assist. Attorney General