

Opinion No. 55-6153

May 2, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Alva J. Coats, Chief Supervisor, New Mexico Dry Cleaning Board, P. O. Box 401, Albuquerque, New Mexico

In your inquiry concerning the Wage and Hour Act which becomes law June 10, 1955, you ask two questions concerning the applicability of Section 2 (c) (2) to Dry Cleaners. The inquiry concerns the problem surrounding launderette operators who accept dry cleaning to be processed by a dry cleaner, presumably at a location other than at the place of acceptance.

As I interpret this statute, a dry cleaner who employs four or more employees is exempt from paying the minimum wage if he cleans or repairs garments at retail. In the case of **Northwestern Hanna Fuel Company, vs. McComb**, 166 Fed. 2d 932, and **Armstrong Company vs. Walling**, 161 Fed 2d 515, retail is defined as follows:

". . . the meaning of the word 'retail' may properly be restricted to sales made in small quantities to **ultimate consumers** to meet personal rather than commercial and industrial uses of those articles."

A dry cleaner would fall within this category if he did cleaning directly for the ultimate consumer or if an agent or an employee were used to accomplish this purpose. Of course, an agency can be established by agreement or contract and it may be implied from the words and conduct of the parties and the circumstances of the particular case evidencing an intention to create the relationship, (2 C.J.S. page 1045). Therefore in answer to your first question, if the operating outlets are operated by agents either by contract or implication or by employees of the dry cleaner, then said dry cleaning establishment would be in effect cleaning and repairing garments at retail and would fall within the exemption.

With respect to your second question concerning dry cleaning establishments processing garments for those persons who might fall within the category of independent contractors, it is our opinion that such processing is not at retail, therefore, the dry cleaner does not fall within the exemption with respect to employees performing services for independent contractors.

By: J. A. Smith

Assistant Attorney General