

Opinion No. 55-6197

June 17, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

Receipt is acknowledged of your letter dated June 8, 1955, in which you request an opinion as to whether under Sections 59-5-1 through 59-5-17, N.M.S.A., 1953 Compilation, a woman employed as manager of any mercantile or industrial establishment, in particular women managers of dry cleaning establishments, branches and pick-up stations, may work in excess of eight (8) hours per day. You state further that these women, in addition to their salary receive a bonus or percentage of the profits of the operation of the establishment.

Section 59-5-1, N.M.S.A., 1953, provides that 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 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.

Volume 15 of Words and Phrases, on page 277, defines a mercantile establishment as follows:

"Word 'mercantile' means characteristic of, or befitting, a merchant, having to do with, or engaged in, trade. Atlantic Ice & Coal Co., vs. Maxwell, 188 S.E. 381, 383, 210 N.C. 723."

There is no question that a cleaning establishment is a mercantile establishment and is included in this Act.

Section 59-5-7, N.M.S.A., 1953, provides that nothing in the sections hereinabove mentioned, shall be construed to prevent work in excess of eight (8) hours per day in emergency cases. However, if these women will work in excess of 48 hours, they will have to be paid on the basis of time and a half for such excess time.

In view of the language of the hereinbefore quoted statutes, it is the opinion of this office that a cleaning establishment being a mercantile establishment may work its women employees in excess of eight hours per day in emergency cases, but for all excess work over 48 hours in any one week or seven days, will have to be paid on the basis of time and a half.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assistant Attorney General