

## Opinion No. 55-6244

August 2, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

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

In reply to your letter of June 27, 1955 in which you request an opinion as to whether or not contractors doing work with the State of New Mexico, or any of its political subdivisions on public works contracts as provided by § 6-6-6, N.M.S.A., 1953, can employ and classify on their payrolls an apprentice of any trade before said contractors have complied with the provisions of §§ 59-7-5 through 59-7-7, N.M.S.A., 1953, I find, under the requirements of § 59-7-5, the term "apprentice" shall:

"Mean a person at least sixteen (16) years of age who is covered by a written agreement with an employer, or with an association of employers or employees acting as agent for an employer, and approved by the state apprenticeship council, which apprentice agreement provides for not less than 4000 hours required for any given trade by reasonably continuous employment for such person, for his participation in an approved schedule of work experience through employment and for at least 144 hours per year of related supplemental instruction."

Section 59-7-6, specifies what every apprentice agreement shall contain. Section 59-7-7, provides for approval of the apprentice agreement by the director and provides how the agreement shall be signed by both the employer and the apprentice. Section 6-6-6, provides the minimum wages to be paid all public works by contractors and employers, and provides for the weekly payments of wages and posting of the wage scale and prevents the withholding of funds.

Section 59-7-12, N.M.S.A., 1953, reads as follows:

"The provisions of this act (59-7-1 to 59-7-12) shall apply to a person, firm, corporation or craft only after such person, firm corporation or craft has voluntarily elected to conform with its provisions."

This last section specifically provides that any person, firm, corporation, or craft, may voluntarily be bound by the provisions of this act. Therefore, any of the hereinbefore party or parties, unless they voluntarily join and comply with the provisions of Section 59-7-5, are not bound by it.

It is therefore the opinion of this office that if a contractor voluntarily abides and complies with the provisions of this act, (§§ 59-7-1 to 59-7-12, N.M.S.A., 1953) or is a party to a valid apprenticeship contract the apprentice is entitled to the minimum wages for apprentices on public works, as provided by § 6-6-6, N.M.S.A., 1953.

We suggest that in all public works contract forms or specifications, in the future you should define what an apprentice is as prescribed in § 59-7-5, N.M.S.A., 1953.

You further ask for an opinion as to what to do in cases where contractors or employers have employed and classified under their payrolls, any apprentice of any trade who has not qualified as an apprentice as provided by the section mentioned above, and whether this employee or apprentice can demand the pre-determined wages provided by § 6-6-6.

It is the opinion of this office that in cases where a person is employed under theory of apprenticeship either under statute in question or otherwise, and person does not comply with the indenture, educational training and other features of the apprenticeship law, then he is in violation thereof and the employee so misclassified has the right to demand the pre-determined wages as a journeyman in that trade.

Trusting that this fully answers your inquiries, I remain

By: Hilario Rubio

Assistant Attorney General