

Opinion No. 60-202

October 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Blas A. Lopez County School Superintendent San Miguel County Las Vegas, New Mexico

QUESTION

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Are the bus drivers in San Miguel County employees of the county so as to come within the provisions of the Workmen's Compensation Act?

CONCLUSION

Yes.

OPINION

{*612} ANALYSIS

The answer to your question depends upon a determination of whether a bus driver is an employee or an independent contractor under the contract entered into between the driver and the Board of Education. A copy of the contract was attached with your request. This office rendered an opinion based upon a contract very similar if not exactly the same in 1957 that held that the bus driver under the contract was an employee of the Board rather than an independent contractor. Opinion of the Attorney General No. 57-129, dated June 12, 1957.

We have examined the contract and are still of the opinion that the result reached in that opinion was correct and is analogous to the present situation. The test of whether a person is an employee or an independent contractor is set forth in **Bailey v. Farr**, 66 N.M. 162, 344 P. 2d 173. The question in that case was the same as here -- whether the person was an employee, and, therefore, entitled to coverage by the Workmen's Compensation Act. The court held that the test was whether the party has the right to control the work. If he has such control, he is an independent contractor.

We have examined the contract in question and arrive at the conclusion that the right to control the work of the bus driver is under the contract vested in the Board of Education and not in the driver himself. We note, particularly, paragraph 13 and 16 of the contract. The 13th paragraph provides:

"To permit no one but himself to drive the truck without first getting the consent of the county or municipal board."

This is normally considered to be an element of control. See **Ludlow v. Industrial Commission**, 65 Utah 168; 235 Pac. 884. The 16th paragraph of the contract provides as follows:

"To recognize the superintendent or principal of the school as the administrative officer of the board in charge of all activities of the school, including the transportation of pupils, to follow his instructions and reasonable interpretations in all matters pertaining to the school and transportation of pupils * * *."

As we view these paragraphs along with the entire contract, the bus driver is an employee of the Board of Education rather than an independent contractor.

{*613} We hold, therefore, that the bus drivers under the contracts are employees rather than independent contractors and are entitled to coverage under the Workmen's Compensation Act.

By: Boston E. Witt

Assistant Attorney General