

Opinion No. 62-137

November 2, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Chaves County Court House, Roswell, New Mexico

QUESTION

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Are employees who are paid by the hour entitled to receive wages for the permissible period of time during which they leave their employment to vote?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 3-10-7, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"Any registered voter may on the day of election absent himself from employment in which he is engaged, for two hours, between the time of opening and closing the polls, for the purpose of voting and shall not be liable to any penalty therefor, but the employer may specify the hours during which he may absent himself; provided, that this right shall not be extended to an employee when his work day commences more than two hours subsequent to the opening of the polls, or ends more than three hours prior to the closing of the polls, and any person or corporation who shall refuse such right to any employee shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$ 50.00) nor more than one hundred dollars (\$ 100)."

Enactments such as the above have quite uniformly been upheld as a proper exercise of the police power since they attempt to safeguard the rights of suffrage and insure the full and free exercise of the elective franchise. **People v. Ford**, N.Y., 271 App. Div. 141.

Many states have statutes which **specifically** provide that no deduction is to be made from an employee's wages for the permissible period of time during which he leaves his employment to vote. New York Election Law, § 226; Colo. Rev. Stats., § 49-10-8; Ariz. Rev. Stats., § 16-897; Nev. Rev. Stats., The constitutionality of such statutes has been

upheld by the United States Supreme Court. **Day-Brite Lighting, Inc., v. Missouri**, 342 U.S. 421.

Section 3-10-7, supra, simply provides that the employee is not "liable to any penalty" for the two hours during which he absents himself from his employment for voting purposes. However, it is a well recognized rule of statutory interpretation that laws relating to elections should be liberally construed so as to effectuate their object of securing to all citizens possessing the necessary qualifications the right to cast their votes for candidates of their choice. 29 C.J.S. **Elections** § 191.

Bearing in mind this rule of statutory interpretation, in conjunction with the fact that the word "penalty" is sometimes used to include any action which involves a disadvantageous consequence, it is our opinion that an employee who is qualified to vote and who leaves his employment to do so is entitled to his hourly wage for a maximum period of two hours. See **Perkin v. Brown**, 53 F. Supp. 176; **City of Cincinnati v. Wright**, 77 Ohio App. 261, 67 N. E. 2d 358.

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