

Opinion No. 67-89

July 11, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Senator Edmundo R. Delgado 325 E. Berger Street Santa Fe, New Mexico

QUESTION

QUESTIONS

1. What is the time period, under state law, that state employees are required to work?
2. Assuming that employees of the state are required to work an eight-hour day, what time period constitutes an eight-hour day?
3. Are all departments of state (Legislative, Executive, and Judicial) required to work an eight-hour day?
4. Is there any requirement that this work be done at any specific hours of the day? If the answer to this question is "a normal work day", what constitutes a normal work day?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.
4. See analysis.

OPINION

{*128} ANALYSIS

The New Mexico Constitution, Article XX, Section 19, provides that

"Eight hours shall constitute a day's work in all cases of employment by and on behalf of the state or any county or municipality thereof."

This Section of our Constitution has been interpreted by the New Mexico Supreme Court in the case of **Jaramillo v. City of Albuquerque**, 64 N.M. 427, 329 P.2d 626 (1958). In that case, the New Mexico Supreme Court held:

"So we conclude that Article 20, Section 19 of our Constitution **is not self-executing but is a declaration of principle or policy as to the number of hours employees of the class named should work to be entitled to a day's wages.** We can not believe the Constitutional Convention would frame a constitution limiting and restricting work to eight hours in any calendar day without in some manner providing for extraordinary emergencies such as may be caused by fire, flood, danger to life and property, military or naval works or defenses, in time of national distress. It would be presumptuous to assume all these possible exigencies were overlooked." (Emphasis Supplied.)

Therefore, we must turn to the New Mexico Statutes to determine in what manner this Section of our Constitution has been implemented by the New Mexico Legislature. Our research reveals that only Sections 59-6-1 through 59-6-16.1, N.M.S.A., 1953 Compilation, set up a specific plan regarding hours of labor to be worked. Generally, these Sections deal with the employment of children and prescribe a **maximum** number of hours which children are permitted to work. Therefore, we are of the opinion that these Sections are not directly applicable to the problem presented by the questions above.

An indirect reference to the number of hours to be worked by employees of the State may be found in the New Mexico Personnel Act, Sections 5-4-28 through 5-4-46, N.M.S.A., 1953 Compilation. By the terms of Section 5-4-36(G) of the Personnel Act, supra, the Personnel Board is vested with authority to promulgate rules relating to the hours of work, holidays and leave of State employees. The Act provides that these rules will be effective when filed as required by law. The New Mexico Personnel Board, under this authority, has promulgated Sections 1001 and 1001.1 which provide as follows:

"1001. WORK WEEK -- Each operating agency shall establish its own work schedule which shall be submitted to the Director for approval. Upon approval by the Director such schedule shall become the normal work schedule for employees in that agency.

1001.1 Hours of work required of an incumbent, in addition to the approved work week, shall be considered as overtime and shall be compensated as provided in Section 908 or Section 219. Overtime work must be authorized in advance by the appointing authority or his designated representative."

Under these regulations adopted by the State Personnel Board and { *129 } filed as prescribed by law, a general plan for establishment of work schedules is presented. The plan is in accordance with the authority granted to the State Personnel Board by the statutes and the plan itself is reasonable.

We conclude in answer to your Question one that the time period employees of the State are required to work is that time period set up by each operating agency under the State Personnel rules as quoted above.

In answer to your question two, we point out that there is no specific requirement, either constitutional or statutory, requiring that employees of the State work an eight-hour day.

In answer to your question three, we point out that the employees in the judicial branch and the legislative branch of our government are exempt from coverage under the State Personnel Act by the terms of Section 5-4-31, supra. Also, Section 5-4-31, supra, exempts certain members of the executive branch of our government from coverage by the State Personnel Act.

Finally, in answer to your question four, there is no requirement contained in the New Mexico Constitution or statutes that work be done at any specific hours of the day. However, we are sure that the State Personnel Board would not approve a work week which did not conform to the hours typically worked by the business community except in extraordinary circumstances.

By: Paul J. Lacy

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