

Opinion No. 68-04

January 9, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Senator S. Hutchings Cavin P. O. Box 1125 Roswell, New Mexico

QUESTIONS

FACTS

The "Roswell Assistance League Working Mothers' Day Nursery", a nonprofit organization, furnishes working mothers with child day care services. Mothers pay for the services on the basis of financial ability. The nursery is directed and staffed by a supervisor and several other persons who are paid for their services.

Are the supervisor and other persons paid by the agency for services, covered by the provisions of Chapter 188 of the Laws of 1967 being the Minimum Wage Act, Sections 59-3-20 through 59-3-27, N.M.S.A., 1953 Compilation.

CONCLUSION

Yes.

OPINION

{*6} ANALYSIS

The only provision under which the above persons could be exempt from the Act is Section 59-3-21 (D)(4) which provides as follows:

any individual engaged in the activities of an educational, charitable, religious, or non-profit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;

The real question is whether in fact the employer-employee relation exists. Employees have been defined as persons who devote full time and energy to provide services for salaries or wages, **Holmes v. Republic Steel Corp.**, 69, N.E., 2d 396; **Arlandson v. Humphrey**, 224 Minn. 49. 27 N.W. 2d 819.

It is our conclusion and opinion that based on the facts presented to us, the involved persons are covered by the provisions of the Minimum Wage Act as they are employees of a nonprofit organization.

By: Myles E. Flint

Assistant Attorney General