

Opinion No. 74-01

January 3, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Ricardo M. Montoya New Mexico State Labor Commissioner Villagra Building,
Room 129 Santa Fe, New Mexico 87501

QUESTIONS

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Do "overtime" provisions of the Minimum Wage Act, as amended, [§§ 59-3-20 through 59-3-27, NMSA, 1953 Comp.] apply to cotton gin workers?

CONCLUSION

Yes.

OPINION

{*2} ANALYSIS

The "overtime" provisions found in Section 59-3-22, of the Minimum Wage Act, **supra**, apply to "employees." Are cotton gin workers "employees?" Yes, unless they are "employed in agriculture" and fall within one or more of the categories established in Section 59-3-21 (C)(10) of the Act, **supra**. Are cotton gin workers "employed in agriculture?" That term is not defined in the Minimum Wage Act or elsewhere in New Mexico law. However, the term "agricultural labor" is defined in Section 59-9-22(R), NMSA, 1953 Comp. (1973 P.S.) in connection with unemployment compensation. That definition emphasizes the idea that, in order to be "agricultural labor," it must generally be performed on a farm, in the employ of the operator of a farm, or must be at least incidental to ordinary farming operations.

The Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201-219, defines "Agriculture" in Section 3(f) as follows:

"(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including

preparation for market, delivery to storage or to market or to carriers for transportation to market."

Because the provisions of our New Mexico Minimum Wage Act were taken practically verbatim from the Fair Labor Standards Act, **supra**, and because your agency intends to follow federal precedent in this area when it is applicable, the above definition is of assistance. According to federal interpretation of the definition, in order for cotton ginning to be included within "agriculture," it must be a practice performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, specifically preparation for market. As with "agricultural labor," "agriculture" is thus limited to operations closely connected with a farm. In general, however, cotton ginning in New Mexico is performed off the farm and gins are neither owned by farmers nor used in conjunction with their farming operations.

With the above definitions and interpretation in mind, it is apparent that cotton gin workers in New Mexico will rarely be "employed in agriculture." They will not be exempt from law regulating overtime compensation. Even if in some instance a group of {*3} workers is found to be "employed in agriculture," the workers must still receive overtime pay pursuant to the Minimum Wage Act unless they fall within one or more of the categories in Section 59-3-21(C)(10), **supra**.

By: Bill Primm

Assistant Attorney General

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