

Opinion No. 75-71

December 12, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Mr. Frank J. Beserra Executive Director Human Rights Commission of New Mexico
Villagra Building Santa Fe, New Mexico 87503

QUESTIONS

QUESTIONS

What is the relationship between the age discrimination provisions of Section 4-33-7A of the Human Rights Act and the prohibition against employment of minors (under age 21) by liquor licensees?

ANSWER

See analysis.

OPINION

{*188} ANALYSIS

Section 46-10-17, NMSA, 1953 Comp. bears upon your question and provides:

"Employment of minors prohibited. -- It shall be a violation of this act for any retailer or dispenser knowingly to employ any person under the age of twenty-one (21) years **in the sale and service of alcoholic liquors.**" (Emphasis added)

Initially, it should be noted that the above quoted state statute is a specific exemption to Section 13-13-1, NMSA, (1973 Supp.) which states:

"Except as otherwise specifically provided by existing law, any person who has reached his 18th birthday shall be considered to have reached his majority." (Emphasis added)

With respect to Section 46-10-17, **supra**, which prohibits the employment of minors in the sale and service of alcoholic liquors, it is our opinion that it is unlawful for any liquor licensee to employ any person under the age of twenty-one (21) years to be engaged in the preparation, sale, service or delivery of alcoholic beverages. This statute does not appear, however, to preclude employment of minors on licensed premises in jobs such as waiters, waitresses, bus boys, dishwashers, and janitors **if** such jobs do not entail preparing, selling, serving of delivering alcoholic beverages.

Finally, Section 46 - 10 - 12.10, NMSA, (1973 Supp.) provides:

"Loitering of minors consists of the licensee or his agent, of any liquor licensed premises permitting a minor under the age of twenty-one (21) years to attend, frequent or loiter in or about the premises without being accompanied by a parent or a guardian."

It is inconceivable that the presence of minors in licensed premises for purposes of lawful employment (i.e. employment not involving the preparation, sale, service, or delivery of alcoholic beverages) would be construed "loitering" under Section 46-10-12.10, **supra**. Indeed, the term "loiter" or "loitering" has a well established and commonly understood meaning in the law. To "loiter" is to ^{*189}consume time idly, to linger without purpose or to waste away time. **U.S. v. Close**, 349 F.2d 841 (4th Cir. 1965; **People v. Novak**, 46 A.D. 2d 469, 363 N.Y.S. 2d 142 (1975). Consistent with this reasoning, the court in the case of **Polmentere v. Wright**, 485 S.W.2d 104 (Mo. 1972) held that "loitering," for purposes of the Department of Liquor Control regulations prohibiting a liquor licensee from allowing loitering by specified persons upon the licensed premises, involves both time and purpose. The persons involved in the **Palmentere** case had a right to enter the premises as customers and as customers they would not have been "loitering." Similarly, in the instant factual situation, lawfully employed minors have a right to enter the premises to perform their employment functions, and as such employees they would not be lingering without purpose or wasting away time. Thus they would not be "loitering." Therefore, in our judgment it is unlawful for any liquor licensee to employ any person under the age of twenty-one (21) years to engage in the preparation, sale, service or delivery of alcoholic beverages. However, employment of persons under the age of twenty-one (21) years in jobs not involving the preparation, sale, service or delivery of alcoholic beverages on liquor licensed premises is not precluded by state law. The age discrimination provisions of Section 4-33-7A, **supra**, must be applied consistently with the foregoing conclusions.

This opinion overrules Opinion of the Attorney General No. 57-324, issued on December 17, 1957.

By: Patricio M .Serna

Assistant Attorney General