

Opinion No. 12-968

October 17, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Dr. William P. Mills, Superintendent, Hospital for the Insane, Las Vegas, N. M.

EIGHT HOUR LABOR CLAUSE OF CONSTITUTION.

Constitutional provision as to 8 hours of labor applies only to persons employed and paid by the day.

OPINION

{*124} Your letter of the 9th instant was received on the 11th, but I have not been able sooner to answer, partly because of being closely occupied with other official matters and partly because the question submitted is of such a character that I felt compelled to make some examination of authorities with a view to seeing what had been decided in other jurisdictions, but I have thus far found but little to assist as a result of that investigation. I may be able to write you further on the subject within a short time.

What you ask for is my opinion concerning the eight-hour labor clause in the state constitution as applied to conditions in the institution under your charge. You say that at present your employes rise at five o'clock and get to work about five fifteen, and are on continuous duty until 7 p. m., and your difficulty is as to whether you can continue this policy, or must you employ them only eight hours in each day, or can they be paid extra for extra time above the eight hours.

The clause of the constitution on this subject merely provides, "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."

I have not found any constitutional or statutory provision identical with this in language, but there is a statute of the United States which is somewhat similar, and its language is, "Eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by or on behalf of the Government of the United States." Under this statute it appears to be well settled by decisions of the federal courts and by opinions of attorneys general of the United States that this does not prevent employment of day laborers to work more than eight hours, nor does it in any way limit or fix the wages to be paid. The conclusion to be drawn from the authorities is, that this statute is to be regarded as in the nature of a direction that eight hours are deemed a proper length of time for a day's labor, but contracts fixing or giving a different length of time as a day's work are legal and binding upon the parties making them. In other words, notwithstanding the statute there is nothing to prevent the employment of persons to work more than eight hours and to be paid whatever may be agreed upon.

I incline very strongly to the belief that our constitutional provision would not apply to any except persons employed and paid by the day. That is to say, if your employes are paid a fixed sum by the month, this provision could not be construed as preventing any one from working as many hours as might be required by the superior {*125} officers. This may not be important, however, as I think from either point of view the same result is reached. If you employ persons by the day, you can easily specify that the pay shall be so much per day for eight hours' work and so much more for additional time; or if the employment is by the month, you can specify that the hours of labor shall be such as may be required from day to day, and there would be no violation of the constitutional provision.

This is more unquestionable perhaps with regard to your institution than some others as to which the appropriations fix the rates of pay, as the appropriation for the asylum is made in one single lump sum, and its use is committed to the board without any specification as to how it shall be used.

I return herewith the newspaper clipping about a controversy in Arizona on this subject which you enclosed with your letter and asked to have it returned.