

Opinion No. 37-1511

January 28, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. F. Charles Davis State Labor Commissioner Santa Fe, New Mexico

{*43} This is to acknowledge receipt of your letter of January 25th in which you desire to know:

1. Whether employees of interstate truckers come under the provision of the New Mexico Workmen's Compensation Law.
2. Whether or not compensation purchased in New Mexico covers employees {*44} who enter other states while transacting the business of their employer.

From the context of the letter which prompted your inquiry, I presume you wish to know whether or not interstate truckers are exempt from the provisions of our Compensation Act by reason of the fact that they are engaged in interstate commerce. I wish to refer you to the opinion of the Attorney General dated February 27, 1935, in which it was held that a bus company engaged in both interstate and intrastate commerce was subject to our Workmen's Compensation Law, in the absence of federal legislation covering such industries. I have been unable to find any federal legislation covering Workmen's Compensation for truckers, and, therefore, can see no reason why they would not come under the doctrine announced in the opinion above referred to. However, I wish to call your attention to the fact that the business of trucking, as such, unless associated with and a part of some other hazardous business, does not come under the compulsory provisions of our Act. In other words, it is not an extra-hazardous occupation as defined by Section 2, Chapter 178, Laws of 1933, amending Section 156-110 of the New Mexico Code, 1929. Such being the case, it would be unnecessary for interstate truckers to carry Workmen's Compensation. See *Koger vs. Woods*, 31 Pac. (2) 255. However, under the opinion of the Attorney General above referred to, the workmen and employer could elect to come under the Workmen's Compensation Act by voluntary agreement pursuant to Section 1, Chapter 178, Laws of 1933.

Your second question requests information which I think concerns private policy of insurance companies rather than enforcement of Workmen's Compensation Act as delegated to you by law. We, therefore, do not attempt to commit ourselves upon this proposition, but will give you the benefit of our research.

Our Supreme Court has never passed upon this proposition, and upon the matter the courts are hopelessly divided. The courts of a majority rule predicated their decisions *sota*, Colorado, Georgia, Nebraska, Tennessee, Utah, Michigan, Wisconsin, Iowa, West Virginia and Kansas, have held that an employee employed and insured in one state and injured in another state is protected by the Workmen's Compensation Act. The

courts of other states, including North Carolina, North Dakota, Massachusetts, Illinois and Oklahoma, have held that workmen's compensation statutes have no extraterritorial force and do not cover accidents outside of the state. Some of the courts announcing the majority rule predicted their decisions upon the fact that they were construing elective rather than compulsory acts. However, the majority of them justified their opinions upon the wording of the statutes covering "any employer engaged in an extrahazardous occupation." It has likewise been held that while the employer is not liable where the employment contract requires work exclusively outside of the state, liability attaches where it is necessary for the employee to leave the state in the course of his employment. See *Ohio Industrial Commission vs. Gardiner*, (Ohio) 164 N. E. 758. The question is the subject of exhaustive annotations in 3 A.L.R. 1357; 18 A.L.R. 293; 28 A.L.R. 1347; 35 A.L.R. 1416; 59 A.L.R. 738; 82 A.L.R. 716; and 90 A.L.R. 119.

It is my opinion that the majority rule is a more reasonable one and is one more in keeping with the policy of our Workmen's Compensation Act. However, I wish to direct your attention to the fact that our Supreme Court held, by way of dictum in *Kandelin vs. Lee Moor Contracting Company*, 24 Pac. (2) 731, that our Workmen's Compensation Act had no extraterritorial force. Whether or not they would so hold {^{*45}} if this question were presented directly to them is a matter of conjecture.

By: RICHARD E. MANSON,

Asst. Atty. Gen.