

Opinion No. 39-3111

April 20, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. B. G. Dwyre, State Highway Engineer, Santa Fe, New Mexico. Attention: Mr. L. D. Wilson, Right of Way Engineer

{*40} By your letter dated April 18 you make inquiry with reference to the Act of Congress commonly referred to as the "Fair Labor Standards Act of 1938" (Public -- No. 718 -- 75th Congress).

Specifically, you inquire whether the Act applies to the employees of the State Highway Commission.

The Act in question defines the term "employer" and expressly excludes any state or its political subdivisions as follows:

"Sec. 3 (d). 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee **but shall not include** the United States or **any State or political subdivision of a State**, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

The Act also defines the word "state" as follows:

"Sec. 3 (c). 'State' means any State of the United States or the District of Columbia or any Territory or possession of the United States."

An employee of the State Highway Commission is, in my opinion, an employee of the state. See *Looney vs. Stryker*, 31 N.M. 557, 249 P. (2d) 112, where the Supreme Court of this state held as follows:

"The State Highway Commission is an agency of the State and not a separate body politic or corporate."

Since an employee of the State Highway Commission is an employee of the state, and since the state is expressly excluded from the term "employer" in the Federal Fair Labor Standards Act of 1938, it necessarily follows that the State Highway Commission and its employees do not come under the Federal Act.

By: FRED J. FEDERICI,

Asst. Atty. Gen.