

**Opinion No. 43-4396**

October 16, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Robert J. Doughtie, State Labor Commissioner, Santa Fe, New Mexico

Receipt is acknowledged of your letter dated October 14, 1943, enclosing certain correspondence to you from attorneys and others with regard to sawmill operations in this state. I have read this correspondence, and am returning the same herewith.

You request an opinion as to two questions, as follows:

"1. Is the Labor Commissioner, in accordance with section 57-931 of the New Mexico Statutes, 1941 Annotated, within his rights to file an injunction against a sawmill operator, who, over the past months has not paid compensation to his injured employees, and who is carrying a sick and accident policy with the American Home Life Insurance Society of Albuquerque, New Mexico, which is a company that is not registered with the insurance department of the State of New Mexico for the writing of Workmen's Compensation policies?"

Section 57-931 of the 1941 Compilation authorizes you, as Labor Commissioner, to enjoin an employer from continuing his business operations until he has complied with Section 57-903 of the New Mexico 1941 Compilation, relative to filing and undertaking in the nature of insurance or security for the payment of workmen's compensation.

Section 57-903 provides in part as follows:

"Such undertaking shall be either in the nature of a policy certificate of guarantee, or insurance, or mutual insurance issued by some guarantee, insurance or mutual insurance company duly authorized to enter into such character of contracts, or a bond, or other sufficient undertaking, executed by such employer, and two or more good and sufficient sureties, owners of real estate in this state, or secured in such other way as the court may, in any special instance, direct."

If you find that an operator of a sawmill in this state has not complied with Section 57-903, then you are authorized to enjoin such operator from further sawmill operations until compliance is had.

Failure to file reports required under Section 57-927, 57-928 and 57-929 of the 1941 Compilation subjects the operator to a penalty of from \$ 25.00 to \$ 100.00 for violation thereof.

Carrying a sick and accident policy with an insurance company not authorized to do business in this state except under order and direction of the court is in compliance with Section 57-903.

Your second question is as follows:

"2. In the case of an employee drawing less than \$ 10.00 being fatally injured and leaving a wife and two children as dependents, the wife later remarrying, which would in turn leave only the children as dependents, would the compensation be paid at the rate of twenty-five percent of the earnings, or at the weekly minimum of \$ 10.00? And in the case of the widow and two children, if she does not re-marry, would the compensation be figured at fifty percent of earnings, or at the weekly \$ 10.00 minimum?"

Section 57-918 of the New Mexico 1941 Compilation provides in part as follows:

"In case death proximately results from the injury within the period of one year, compensation shall be in the amounts and to the persons as follows: (2) If there are dependents at the time of the death, the payment shall consist of not to exceed one hundred and fifty (\$ 150.00) for funeral expenses and the percentage hereinafter specified of the average weekly earnings, subject to the limitations of this act (Sections 57-901 -- 57-931), to continue for the period of three hundred (300) weeks from the date of injury of such workman; Provided that the total death compensation payable in any of the cases hereinafter mentioned, unless otherwise specified, shall not be less than ten (\$ 10.00) dollars per week nor more than eighteen (\$ 18.00) dollars per week. \* \* \* '1. To the child or children, if there be no widow or widower entitled to compensation, twenty-five (25) per centum of earnings of deceased, with ten (10) per centum additional for each child in excess of two (2) with a maximum of sixty (60) per centum, to be paid to their guardian.

\* \* \*

'4. To the widow or widower, if there be two (2) children, fifty (50) per centum of earnings.

\* \* \*

'Provided that in the event of the death or remarriage of the widow or widower entitled to compensation under paragraphs 3, 4, 5, or 6 of this subsection, the surviving children shall then be entitled to compensation computed and paid as in paragraph 1 of this subsection for the remainder of the compensable period.'"

Since neither subsection 1 nor subsection 4 specify otherwise, the minimum weekly payments in case of death are fixed at \$ 10.00 per week for a period of 300 weeks from the date of the injury. Since the workman earned less than \$ 10.00 per week, a minimum of \$ 10.00 per week should be paid to the widow in lieu of fifty per cent of the earnings from the date of the injury to the date of her remarriage, and a minimum of \$

10.00 per week should be paid to the two children, or such person as the court may direct, for the balance of the period of 300 weeks, in lieu of the twenty-five per cent of the earnings of the deceased mentioned in subsection 1 above. In case the widow and mother of two children does not re-marry, the minimum compensation is \$ 10.00 per week for 300 weeks from the date of the injury.

By C. C. McCULLOH,

First Asst. Atty General