

Opinion No. 43-4426

December 14, 1943

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated December 13, 1943, you inquire whether a coal mine operator can withdraw from the provisions of the Workman's Compensation Act by compliance with the provisions of Section 57-904 of the 1941 Compilation relative to filing the notice of non-compliance and posting notices pursuant to said section. This section provides, in part, as follows:

"Any employer subject to the provisions of this act (57-901 -- 57-931) may withdraw from its provisions and reject the same upon the first day of any month, provided, said employer gives written notice to said clerk of the district court of his intention to withdraw from and reject such act, not less than thirty (30) days prior to the first day of the month in which he desires such withdrawal and rejection to become effective; and Provided, further, that such withdrawing employer shall post in conspicuous places in his several places of employment written or printed notice to the effect that on and after the first day of the month in which such withdrawal and rejection shall become effective, said employer will not be subject to the provisions of the Workmen's Compensation Law, which notices shall be posted at least thirty (30) days prior to the date of such withdrawal and rejection and shall be kept continuously posted thereafter in sufficient places frequented by his employees to reasonably notify such employees of such rejections."

In the case entitled *Points v. Wills*, 44 N.M. 31, the Supreme Court, in construing the above section, recognized that a person may elect not to come under the Workmen's Compensation Act by filing a notice, in writing, with the clerk, as provided in said section. There is no reason to doubt but that the Supreme Court, likewise, would give effect to the portion quoted above authorizing an employer to withdraw from the provisions of the Act, pursuant to the requirements thereof.

By C. C. McCULLOH,

First Asst. Atty. General