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ARIZONA ATTORNEY GENERAL

November 4, 1959

Mr. Nathaniel J. Erickson
Justice of the Peace
P. O. Box 65
Bullhead City, Arizona

C. MUECKE
I. Conner
WADE CHURCH
I. Conner
LESLIE C. HARDY

Dear Mr. Erickson:

Your letter of September 30, 1959, directed to Mr. Tom Houlihan of the State Labor Department was referred by him as a legal question to the office of the Attorney General.

Your question was whether or not the Resolution on Minimum Per Diem Wage, effective July 1, 1959, issued by the Arizona State Highway Commission or Article XVIII of the Arizona Constitution has any effect on your hours of labor as Justice of Peace of Bullhead City, Arizona. You state that you are receiving \$75.00 a month before deductions and \$50.00 a month car expense from the Board of Supervisors.

The portion of Article XVIII of the Constitution to which you refer is undoubtedly Section 1 thereof, which reads as follows:

"Sec. 1. Eight-hour Day

Section 1. Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of, the State of Arizona or any political subdivision of the State. The Legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violations of said laws.

It was pursuant to this provision of the Constitution that A.R.S. § 23-391 was enacted by the Legislature, which section fixes the hours of work and the minimum wages for public employees. It was pursuant to this section that the Resolution on Per Diem Wage was issued by the Highway Department.

The Constitutional provision, Article XVIII above referred to, would seem to fix eight hours as the minimum day's work for any political employee, including yourself. However, things unfortunately are not always as they seem. Our Supreme Court has held that this provision in our Constitution is not self-executing, which means that the Legislature has to enact laws to enforce it.

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City of Phoenix v. Yates, [1949], 69 Ariz. 68, 203 P.2d. 1147. This the Legislature has done in A.R.S. § 23-391. However, the Legislature saw fit to only make the eight hour limitation and the minimum per diem wage applicable to public employees engaged in "manual or mechanical" work.

Our Supreme Court has also sustained this limitation and has said in effect that the Legislature does not have to cover all classes of public employees. Rehringer v. Inspiration Consolidated Copper Co., 17 Ariz. 232, 149 P. 1055.

Since the Supreme Court has eliminated firemen, (City of Phoenix v. Yates, supra), and also prison guards and prison matrons, State v. Ash, (1939), 53 Ariz. 197, 87 P.2d. 270), from the coverage of this law on the grounds that they were not engaged in "mechanical" or "manual" labor, it seems clear that a Justice of Peace would also not be covered.

Therefore, it is the opinion of the Attorney General that neither the Resolution nor Article XVIII of the Constitution have any effect on your hours of work or your wages as Justice of Peace. It follows that only the Legislature by the enactment of additional legislation could cover your employment.

This reply to you has not been in the form of a formal opinion. If you desire a formal published opinion, we shall be glad to write one.

If you have any other questions or need any further assistance, please do not hesitate to call on this office.

Very truly yours,

WADE CHURCH
The Attorney General

By: _____
C. A. MUECKE
Special Assistant to
The Attorney General

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