

September 26, 1950
Op. No. 50-212

Mr. J. N. Brennen
Manager, State Labor Department
39 West Adams Street
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Brennan:

We have your letter of September 19 in reference to the employment of minors by farmers and the responsibility of the farmers under the federal child labor law. In speaking of a meeting between the growers and a representative of the federal government, you state in your letter:

"The main discussion was where the responsibilities lie for violations of the employment of minors under sixteen years of age--whether upon the labor contractor or the grower, himself. The growers took the attitude that the labor contractor was responsible; the Government officials took the attitude that the grower, himself, was the responsible party. The growers countering time and time again that they had no control over the actions of the labor contractor.

It was called to the attention of the group that Statute 56-701 of the Labor Laws of the State of Arizona, under the caption of 'Defining Employment Agents', was never clarified as to whether this was all inclusive of agriculture labor contractors. The usual procedure of these contractors is to pick up crews, haul them to the fields and they are paid for their services at the rate of .25¢ per hundred pounds for all cotton their crews pick. In reading this Statute 56-701 at this gathering, attention was called to the following quote: ' * * which furnish employers seeking laborers or other help of any kind, information enabling or tending to enable such employers to secure such help * * '. Quoting further from this statute - ' * * whether such agents conduct their operations at a fixed place of business, on the streets or as transients * * '.

I was asked to request an opinion from you as to whether this statute would be all inclusive of these labor contractors, so that the growers might have some semblance of protection."

Under the child labor law, the responsibility is placed on the employer, and to determine whether it be on the farmer or an independent contractor will depend on the facts in each particular case. We cannot give a legal opinion on the question without having all the facts. So we will state some general rules of law which may be applied to the facts in each individual case.

An employment agent as defined in Section 56-701 ACA 1939 is not an employer. Said section is in part as follows:

"The term 'employment agent' shall mean * * * all persons which for a * * * charge, furnish to persons seeking employment information, enabling * * * such persons to secure the same, or which furnish employers seeking * * * help, information enabling or tending to enable such employers to secure such help, or which keep a register of persons seeking employment. * * * "

Under the statute the employment agent is merely a go between for the employer or employee; he only brings the parties together such as a real estate broker does in negotiating a deal; he has nothing to do with the hiring or firing of the help, nor does he exercise any supervision or control over the employees or direct the manner in which the work is to be done. ✓

The courts have in a number of cases said that in determining whether the relationship of master and servant exists, the final test is whether the employer has the right to exercise control and supervision over the work and has the right to direct the manner in which it is done and the right to stop the work and discharge employees. In the case of Industrial Commission v. Byrne, 62 Ariz. 132, 155 P. 2d 784, the Court said:

"We have, in a number of cases, decided that the test to determine if one is an employer or an employee is whether the employer retains supervision or control of the work. Grabe v. Industrial Comm., 38 Ariz. 322, 299 Pac. 1031; Fox West Coast Theatres v. Industrial Comm., 39 Ariz. 442, 7 Pac. (2d) 582; United States

Fidelity & Guaranty Co. v. Industrial
Comm., 42 Ariz. 422, 26 Pac. (2d)
1012."

In Industrial Commission v. Meddock, 65 Ariz. 324,
180 P. 2d 580, we find this language:

"It is the right to control rather than
the fact that the employer does control
that determines the status of the par-
ties, and this right to control is, in
turn, tested by those standards applic-
able to the facts at hand.

* * * * *

' * * * A strong factor tending to show
the relationship of an employee is the
employer's right to terminate the work
at his pleasure. Neither the manner of
payment nor the choosing by the employee
of his own hours of work is conclusive of
the relationship. * * * The right to
immediately discharge involves the right
of control. * * * "

The Court said in West Chandler Farms Co. v. Industrial
Commission, 64 Ariz. 383, 173 P. 2d 84:

" * * ' * * * The compensation paid was
on an acreage basis, and not per diem,
but this, of itself, is not decisive
of the issue. The true test, as stated
in the Grabe case, supra, is whether
the alleged employer retains supervi-
sion or control of the manner of the
work. The testimony of Brown on this
point is not positive, and it would be
of little value as a precedent in future
cases for us to set it forth verbatim.
Generally speaking, the reasonable con-
clusion therefrom may be summarized as
follows: Brown watched the progress of
the work to see whether it was turning
out a satisfactory result, directed any
alterations in its manner that he
thought best, and had the right at any
time he thought it was not being done
in the proper manner to cause Alexander
to cease the work and remove his machine
from the premises. He exercised this
power of direction frequently, without

any objection or protest from Alexander. We think that this situation is that of employer and employee rather than one of an independent contractor.'

It is our view that the work being performed by Trout was a part or process of the business of the petitioner, and that the evidence justified the commission in finding that it retained supervision and control of the operation.
* * * As in the Alexander case, the petitioner watched the progress of the work, gave directions as to the manner in which the baling should be done. The work was stopped from time to time. The commission, we think had the right to infer from the testimony that the petitioner had the power at any time it believed Trout was not properly conducting the work to terminate the employment.
* * * "

If the employment agent merely selected persons willing and able to work and delivered them to the farm for compensation, the amount of which depended upon the amount of work done by the employee and has no supervision or control over the work or the manner in which it is done or the right to terminate the employment, he would not be the employer and would not be responsible under the law. If the farmer accepted the person produced by the agent and had the right to supervise or control the work, direct the manner in which it is performed and the right to terminate the employment at will, he is the employer and responsible under the law regardless of the manner as to how the employee was obtained.

On the other hand, if a person contracts with a farmer to harvest a crop and to furnish the labor necessary to accomplish the result and has the right to supervise and control the work and direct the manner in which it is done and has the right to discharge the employee, he is an independent contractor and the persons performing the work would be his employees, and the contractor would be responsible under the law. In Maxey v. Johnson, 29 Ariz. 452, 242 P. 866, the Court speaking of independent contractors said:

"We have said that 'one who exercises an independent employment, and contracts to do a piece of work according to his own method, and without being subject to the control of an employer, save as to

the results of the work,' is an independent contractor (Swansea v. Molloy, 20 Ariz. 531, 183 Pac. 740; Alhberg v. Louise Mining & Development Co., ante, p. 313, 241 Pac. 510), and this definition is perhaps the one most frequently quoted."

We trust this will give you the desired information and if we can be of further assistance, do not hesitate to call on us.

Yours truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

EA:ec