

Montana Codes does not seem to be entirely clear, but it can be read to make an exception of 'any air compressor operated by any power'."

Section 2730 provides: "It shall be unlawful for any person to operate an electric hoisting engine, or any air hoisting engine, or any hoisting engine operated by gas, oil, or any product of oil, of over five horsepower when used in lowering or hoisting men, except in operating elevators in buildings, or any air compressor operated by any power, without first obtaining a license therefor from a boiler inspector as herein provided. Except that in emergencies the provisions of Section 2728 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein."

Although this is a penal statute, the common law rule that it must be strictly construed has been abrogated in this state by Section 10710, R. C. M. 1921, which also provides that: "All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice." (See *Continental Supply Company v. Abell*, 95 Mont. 148, 24 Pac. (2d) 133; *State ex rel. Kurth et al. v. Grinde et al.*, 96 Mont. 608, 32 Pac. (2d) 15.)

The duty of the courts is to ascertain the intention of the legislature (Section 10520, R. C. M. 1921; *Conley v. Conley*, 92 Mont. 425, 15 Pac. (2d) 922), and in construing a statute a court must elicit its purpose and intent from the terms and expressions employed, if this is possible, calling to its aid the ordinary rules of grammar. (*Jay v. School District No. 1 of Cascade County*, 24 Mont. 219, 61 Pac. 250.)

Applying these rules to the statute quoted above we believe it is clear that the phrase "except in operating elevators in buildings" is a restrictive prepositional phrase qualifying the sentence in so far as it refers to hoisting engines. Since the excepting phrase is followed by the disjunctive "or any air compressor operated by any power" we think that the legislature did not intend to extend the

Opinion No. 63.

Highways—Engineers—Air Compressors.

HELD: Any person who operates any air compressor operated by any power, except in emergencies, as provided in Section 2728, R. C. M. 1921, must obtain an engineer's license as required by Sections 2731-2732, R. C. M. 1921.

March 21, 1935.

Mr. R. D. Rader
State Highway Engineer
The Capitol

We have your letter of March 18, requesting the opinion of this office upon the following matter:

"The question has been raised by one of our highway contractors as to whether or not a licensed engineer is required to operate air compressors which are used to drive jack hammers and other drills on highway work. Section 2730 of the

exception to both elevators used in buildings and to all air compressors. If such was the intention appropriate and unambiguous language could have been readily employed. The legislature could have used the conjunctive instead of the disjunctive, or could have said "or except any air compressor." The use of the word "any" is significant. If it was the intention to exempt all air compressors, instead of to regulate the operation of any such compressor, the legislature could have said "and air compressors."

Accordingly, it is our opinion that any person who operates any air compressor operated by any power, except in emergencies, as provided in Section 2728, R. C. M. 1921, without first obtaining the license required by Sections 2731-2732, R. C. M. 1921, is guilty of a misdemeanor and upon conviction thereof should be punished as provided by Section 2736, R. C. M. 1921.