

Opinion No. 105.**Labor—Schools and School Districts—
Janitors.**

Held: Eight hours constitute a day's work for all janitors in schools, and, therefore, a school board may not contract to employ janitors for a work day in excess of eight hours.

August 12, 1943.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Stafford:

You have submitted for my consideration your opinion rendered to the clerk of school board number one of Great Falls. The question considered in this opinion is as to the legality of the school board to employ janitors for longer than eight hours in any one day. In your opinion you have reached the conclusion that such employment is prohibited by law. You refer to the opinion of this office rendered at your request, numbered Opinion No. 70, Volume 20, Report and Official Opinions of the Attorney General. That opinion dealt with the question as it relates to county employees. It was there held a contract of employment entered into by the county commissioners for the performance of services for a period longer than eight hours in any one day, would be illegal and void in violation of Article XVIII, Section 4 of the State Constitution, and Section 3079, Revised Codes of Montana, 1935, as amended by Chapter 135, Laws of 1943. The amendment provides an exception in case of emergency, which is not pertinent to the question here.

Section 3079, Revised Codes of Montana, 1935, provides for hours of labor for state and municipal governments, mines, mills and smelters. It provides:

"A period of eight hours shall constitute a day's work in all works and undertakings carried on or aided by any municipal, county or state government, first class school districts and on all contracts let by them. . . ."

This provision of the statute refers to "works and undertakings carried on or aided by any municipal, county, or state government and first class school districts, and on all contracts let by them." I am of the opinion this provision refers to works of improvements such as erection of buildings and bridges, etc., construction of roads and highways, etc., for the statute continues in the following language:

" . . . and for all janitors, except in court houses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county or state governments, school districts of first class, and in mills and smelters for the treatment of ores and in underground mines, and in the washing, reducing and treatment of ores."

This latter provision particularly mentions specific classes of employment. It includes all janitors, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose or any municipal, county or state governments, school districts of first class, and in mills and smelters for the treatment of ores and in underground mines, and in the washing, reducing and treatment of ores.

It will be noted the only exceptions contained in the statute are janitors in court houses of sixth and seventh class counties, and all classes of employment, including janitors, in school districts other than first class. Having specifically mentioned school districts in addition to municipal, county and state governments, it becomes unnecessary to determine a distinction between a school district and a municipal, county or state government.

Therefore, under the provisions of Section 3079, the eight hour law would not apply to janitors in school districts other than those of the first class.

Section 3079 was enacted prior to the amendment of Section 4 of Article XVIII of the State Constitution. The amendment to Section 4 of Article XVIII provides: "A period of eight hours shall constitute a day's work in all industries, occupations, undertakings

and employments . . ." The amendment was adopted by a vote of the people at the election in November, 1936, and thereupon became law. This later enactment effected a repeal of that portion of Section 3079 which permitted a period of more than eight hours in any occupation or employment. By the adoption of the amendment to Section 4 of Article XVIII, the people declared the general policy of the state on the subject. (*State v. Safeway Stores, Inc.*, 106 Mont. 182, 202, 76 Pac. (2nd) 81.) The amendment specifically provides the legislature "shall have no authority to increase the number of hours constituting a day's work beyond that herein provided."

It is therefore my opinion eight hours constitute a day's work for all janitors in schools, and, therefore, a school board may not contract to employ janitors for a work day period in excess of eight hours.

Sincerely yours,
R. V. BOTTOMLY
Attorney General