Opinion No. 5

Schools and School Districts—Workmen's Compensation Act—School District Employees Covered by Workmen's Compensation Act.

HELD: The Workmen's Compensation Act is, as to a school district, exclusive, compulsory and obligatory upon both employer and employee and there is no right to elect whether or not each shall be subject to the act.

April 4, 1955.

Mr. James C. Wilkins, Jr.
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. Wilkins:

You have requested my opinion as to whether it is mandatory for school districts to comply with the Workmen's Compensation Act.

In answering your question, it is necessary to consider Section 92-206,

R.C.M., 1947, which reads in part as follows:

"Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee."

There is no doubt that a school district is a public corporation, as Section 75-1803, R.C.M., 1947, provides that every school district is a body corporate. In Jay vs. School District No. 1, 24 Mont. 219, 61 Pac. 250, and State ex rel. School District No. 28 vs. Urton, 76 Mont. 458, 248 Pac. 369, it was held that school districts are public corporations.

In Butte vs. Industrial Accident Board, 52 Mont. 75, 156 Pac. 138, our Supreme Court considered the above quoted statute and held that plan No. 3 of the Workmen's Compensation Act is to a city, exclusive, compulsory and obligatory upon both employer and employee. Approval was given to this conclusion in Aleksich vs. Industrial Accident Fund, 116 Mont. 127, 151 Pac. 1016, where it was held that "The Workmen's Compensation Act as to public corporations and their employees is exclusive, compulsory and obligatory."

In your letter you suggest that Section 92-206, R.C.M., 1947, means that all public corporations, if they are engaged in an inherently hazardous industry and elect to come under the act, must take their insurance from the state, rather than from a private company or carry it themselves. This contention was specifically considered in Butte vs. Industrial Accident Board, supra, where the court said:

"If this was the intention of the lawmakers, the least that can be said is that they made a superlative effort to conceal their intention in a multitude of useless words. To express the view of the attorney general, it was only necessary to say: 'Whenever a public corporation elects to become subject to this Act, the provisions of compensation plan No. 3 shall be exclusive as to it.' But the legislature did not so express itself; on the contrary, it declared that where a public corporation is the employer, the terms, conditions and provisions of compensation plan No. 3 shall be not only exclusive but compulsory and obligatory as well. It is a general rule of statutory construction that 'every word of a statute must be given some meaning if it is possible to do so.' (State ex rel. Patterson v. Lentz, 50 Mont. 322, 146 Pac. 932.) But, if the contention of the attorney general prevailed, the words 'compulsory and obligatory' would be meaningless."

You also call attention to the fact that Section 92-301, R.C.M., 1947, states the act applies to all inherently hazardous occupations. This section is introductory to the four following sections dealing with hazardous occupations and is primarily limited in scope to these sections. This conclusion was recognized in Aleksich vs. Industrial Accident Fund, supra, and was not construed as a limitation on Section 92-206, R.C.M., 1947.

In the Butte Case the court stated the act must be read as a whole and in light of the history of similar acts. The court said in this connection:

"At the time the bill for this Act was under consideration by the legislature the impression was general throughout this country that an Act compulsory upon private employers would not be constitutional, whereas the right of the state to impose the provisions of the Act upon itself could not be questioned (Wood v. City of Detroit (Mich.), 155 N.W. 592.) There is some reason, therefore, to assume that the legislature made the Act compulsory as far as it was deemed possible to do so."

It is, therefore, my opinion that the Workmen's Compensation Act is, as to a school district, exclusive, compulsory and obligatory upon both employer and employee.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.