

Opinion No. 28

**Montana Highway Patrol—Work Week—Chapter 244, Laws of 1957—
Section 41-1121, RCM, 1947**

Held: Section 41-1121, RCM, 1947, as amended by Chapter 244, Laws of 1957, does not establish a mandatory five day forty-hour work-week for uniformed personnel of the Montana Highway Patrol.

September 25, 1957

Mr. Alex B. Stephenson
Supervisor
Montana Highway Patrol
Helena, Montana

Dear Mr. Stephenson:

You have requested my opinion whether Section 41-1121, RCM, 1947, as amended by Chapter 244, Laws of 1957, established a mandatory five day forty-hour work-week for the uniformed personnel of the Montana Highway Patrol.

Prior to Chapter 244, Laws of 1957, Section 41-1121, RCM, 1947, provided:

"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 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 coal; except in cases of emergency when life or property are in imminent danger."

Chapter 244, Laws of 1957, amended the above section in only one particular and provided:

". . . for fire-fighters in cities of the first and second class, a work week shall be a period of a maximum of forty hours during a five-day week."

In 19 Opinions of The Attorney General 384, it was held that Section 3079 (41-1121, RCM, 1947) placed no limit on the number of days per week that a city, county or state employee could work. The amended provision of the 1957 legislative assembly created a five day forty-hour work-week for firemen in first and second class cities only. The amendment is express on this point and is pointedly illustrated when the legislative history of the bill is considered.

Substitute House Bill No. 339, which is now Chapter 244, when first introduced provided:

"A period of a **maximum** of eight hours **and a maximum of forty hours during a five day week** shall constitute a work week in all works and undertakings carried on or aided by any municipal, county, or state government. . . **Further, that said period of not more than eight hours of labor which constitute a day's work must be completed within a nine-hour period of time after the commencement of the work day.**"

The bold portions of the bill were deleted by the legislature and the present amendment referring to firemen in first and second class cities was adopted. However, there is no statutory prohibition which would prevent the Montana Highway Patrol Board from establishing a five-day forty-hour work-week for the Patrol if in its discretion it chooses to do so.

It is therefore my opinion that Section 41-1121, RCM, 1947, as amended by Chapter 244, Laws of 1957, does not establish a mandatory five day forty-hour work-week for uniformed personnel of the Montana Highway Patrol.

Very truly yours,
FORREST H. ANDERSON
Attorney General