

VOLUME NO. 35

Opinion No. 57

CONSTITUTIONAL LAW — Regular day's work, what constitutes; CONSTITUTIONAL LAW — Hours of labor, limitations; COUNTY COMMISSIONERS — Contracts, hours of labor, limitations; PUBLIC EMPLOYEES — Hours of labor, limitations. Article XII, section 2, Constitution of Montana; section 41-1121, R.C.M. 1947.

HELD: Eight hours constitutes a day's work for road crew employees, and section 41-1121, R.C.M. 1947, precludes the county commissioners from authorizing a ten-hour workday for such employees.

January 8, 1974

Mr. Ronald W. Smith
Hill County Attorney
Office of the County Attorney
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion as to whether the county commissioners may allow road crew employees to work ten hours per day, four days per week, rather than the present eight hours per day five days per week.

Article XII, section 2, Constitution of Montana, provides in pertinent part:

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

In addition, section 41-1121, Revised Codes of Montana, 1947, 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, and for all janitors, except in courthouses 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. Provided, that 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. (Emphasis supplied)

I also refer you to 20 **Opinions of the Attorney General**, no. 70, in which then attorney general Bottomly held that county commissioners may not contract for services for a period in excess of eight hours per day.

THEREFORE, IT IS MY OPINION:

Based upon the above considerations, that eight hours constitutes a day's work for road crew employees and section 41-1121, *supra*, precludes the county commissioners from authorizing a ten-hour work day for such employees.

Very truly yours,

ROBERT L. WOODAHL
Attorney General