

**Coal Mine Examining Board, Authority to Issue Temporary Mine Foreman Certificate. Coal Mine Inspector, Authority to Issue Permits to Mine Foremen, Etc.**

The coal mine examining board may issue temporary certificates, under Section 5, of Chapter 69, laws of 1909, to persons who are not citizens of the United States. A coal mine inspector has authority to grant temporary permits, under Section 9 of said Chapter, which are good only until such time as the person has an opportunity to be examined as to his competency by the board of examiners.

Helena, Montana, April 29, 1909.

Hon. J. B. McDermott, State Coal Mine Inspector, Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 28th instant, requesting an opinion upon the following questions:

1. Would the Examining Board, created by Chapter 69, Laws of 1909, be warranted in issuing a certificate of competency to a person who had been employed continually as foreman, fire boss or mine examiner, for a period of one year with the same company, if the person was not a citizen of the United States?

2. Under the conditions named above, would the State Coal Mine Inspector be warranted in issuing a permit to a person to serve as foreman, fire boss or mine examiner?

In answer to your first question, you are advised that under said Chapter 69 every person who desires a permanent certificate of competency, which entitles him to work for any person or for any company in the state, must be a full citizen of the United States, but that under the provisions of Section 5 of said law there is a special proviso inserted, which provides that:

"Any person who shall have been employed as mine foreman continually for a period of one year preceding the approval of this act by the same firm, person or corporation shall be granted a certificate without undergoing such examination, but he shall not be employed by any other person, firm or corporation without having successfully undergone such examination."

You will notice that this proviso makes no reference to the presentation of credentials as to his qualifications, under the general provisions of this law, nor does it say anything about citizenship, but simply provides that "any person" who has been so employed shall be entitled to such temporary certificate. The words "any person" cannot be held to exclude persons who are not citizens of the United States, and we are not warranted in reading into such proviso, after the words "any person" the following phrase, to-wit: "who is a citizen of the United States."

Your attention is called, however, to the fact that this proviso relates only to mine foremen, and therefore does not authorize the examining

board to grant such temporary certificates to fire bosses or mine examiners.

Apparently the legislature, believing that where a person had been working continually as mine foreman for a period of one year or more for the same company, that it was evidence of his competency to fill such position from the fact that the company had been satisfied with retaining him for such period of time, and therefore the legislature intended by such proviso that such person, regardless of his citizenship, should be entitled to a temporary permit to work for the company which was thus satisfied with his services, but that whenever he quit their employment he must then undergo an examination before he can receive a permanent certificate entitling him to work for any other company.

In answer to your second question, you are advised that under the proviso contained in Section 9 of said Chapter 69, the State Coal Mine Inspector has power to grant temporary permits to persons to perform the duties of mine foreman, mine examiner or fire boss where such persons are employed by any company, corporation, etc., engaged in the operating of coal mines in the state, such temporary certificates to be good only until such time as the person so employed has had an opportunity to be examined as to his competency by the Board of Examiners. Under this proviso, of said section 9, you are further advised that you would have authority to grant a temporary permit to a mine foreman, under the provisions of the proviso contained in said Section 5, and such temporary permit would be good until the next meeting of the Board of Examiners in such county, at which time such mine foreman should appear before the Board of Examiners and there get a temporary permit entitling him to continue his employment, so long as he works for the same company, as provided in said Section 5.

Very truly yours,

ALBERT J. GALEN,

Attorney General.