

Coal Mines, Requirements of Stairway or Cage in Escapement Shaft.

Under the provisions of Sec. 55, Chap. 120, Session Laws of 1911, it is required that a cage be provided in coal mines where the escapement shaft exceeds 100 feet in vertical depth.

Overruled by opinion on same subject May 19th, 1911.

April 11, 1911.

Mr. Joseph B. McDermott,
State Coal Mine Inspector,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 11th inst., asking for a construction or opinion from this office relative to the provisions of Sec. 55 of Chapter 120, Session Laws of 1911, relative to the conduct of coal mines. In your letter you state:

"Where the escapement shaft exceeds one hundred feet in vertical depth, is it optional or obligatory upon the part of the mine operators to equip the escape shaft with cage or cages for the purpose of hoisting workmen out of the mine in case of danger."

From examination of said Sec. 55 it appears that the legislature by this act made provision that in an escapement shaft not exceeding one hundred feet in vertical depth shall be equipped with safe and ready means for removal, etc., in the form of a substantial stairway; and said section further provides that where the escapement shaft exceeds one hundred feet in vertical depth "in place of the stairway it may be equipped with cage, etc."

This provision of the section is enacted for the benefit and protection of the public and of the miners who may be engaged in under-

ground work in the mines, and the construction of the latter portion of the section above referred to depends upon whether or not the word "may" as used in said section is permissive only, or imperative.

The supreme court of Montana, in the case of Montana Ore Purchasing Company v. Lindsay, reported in 25 Mont., at page 27, used the following language with reference to the use of the word "may:"

"This word is sometimes permissive only, sometimes it is imperative. Legislative intent determines whether it is directory or mandatory. According to its natural and usual signification the word "may" is enabling and permissive only and so it must be interpreted where no right of or benefit to the public, nor right of persons other than the one upon whom the permission is conferred, depends upon giving to it an obligatory meaning; but the word is interpreted to mean shall or must whenever the rights of the public or of third persons depend upon the exercise of the power or the performance of the duty to which it refers. In this case where the public or person possess the right to require that the power conferred by the word may be exercised, the word is imperative and mandatory, being the equivalent of shall or must."

This opinion is further followed by the supreme court of this state in the following cases:

State v. Dotson, 26 Mont., 305.

State v. District Court, 37 Mont., 303.

In view of the foregoing opinions of the supreme court of Montana it is my opinion that the provisions of Sec. 55 of Chap. 120, Session Laws of 1911, relative to the equipment of the escape shaft in mines exceeding one hundred feet in vertical depth is mandatory.

Very truly yours,

ALBERT J. GALEN,

Attorney General.