

Inspection. Accident, Coal Mine. Investigation, Coal Mine Accident. Costs of Investigation. State Coal Mine Inspector, Duties Of. Stenographer, Fees Of in Taking Testimony Investigating Accidents in Coal Mine.

Under Section 1682, Revised Codes, it is the duty of the coal mine inspector to examine coal mines in the state, etc., for the health and safety of persons therein employed and to see that the laws are complied with and he is entitled to expenses incurred in such investigation and in investigating the cause of accidents in coal mines, such expenses for stenography hire and otherwise to be reasonable.

May 20, 1911.

Mr. Percy Witmer,
Clerk, State Board of Examiners,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your communication of the 15th inst., transmitting the claim against the state of William Esmay, at Roundup, Montana, for the sum of \$90.00. It appears that this claim arises as a result of the fact that Mr. Esmay was employed by Jos. B. McDermott, State Coal Mine Inspector, to report and transcribe testimony taken concerning the operation of a mine operated by the Republic Coal Co., at Klein, Montana, and respecting the death of one William Lischman, who was killed in said mine. In this connection you request advice as to whether or not the claim is a proper charge against the state and the rate at which same should be paid.

By the provisions of Sec. 1717, Revised Codes, the Mine Inspector is required to investigate all accidents occurring "in any mine" particularly so in case of death. Prior to the creation of the office of coal mine inspector, this was the statutory law and it was the duty of the mine inspector to investigate such serious accidents occurring in coal

or other mines. Sec. 1682, Revised Codes, dealing with the duties of the coal mine inspector is not as specific with reference as to the investigation of accidents by him, as are the provisions of Sec. 1717.

However, by Sec. 1682, it is made the duty of the coal mine inspector to examine coal mines in the state, the workings, machinery, ventilation, etc., for the health and safety of persons therein employed, and to see that the laws regulating coal mines are complied with. Such duties devolving by statute upon the coal mine inspector, he should be allowed, and paid his reasonable expenses incurred in the performance of his duties, and in the incurring of expenses on his part he must be permitted to exercise judgment and discretion as to the matters and things tending to aid him in the administration of his office.

Accordingly under the laws that now exist, I believe the said claim of Esmay a proper and legal charge against the state.

As to the rate which should be paid by the state for the work of Mr. Esmay, I can only say that he should be paid such reasonable amount as the coal mine inspector may have contracted to pay him for his services. The statute regulating fees of district court stenographers, or fees for taking depositions, does not apply in this case, and the claimant should be paid such reasonable compensation as was agreed upon. Coal mine inspector McDermott informs me that he agreed to pay the claimant in accordance with the claim presented and that in his judgment under the facts and circumstances it was necessary and proper for him to have the testimony reported and transcribed, and that the charge therefor is reasonable.

You are therefore advised to approve said claim and direct payment thereof from the appropriation made for the office and traveling expenses of the coal mine inspector.

Should similar cases arise after June 6th, 1911, the same should be paid by the county in which the accident occurs, Chapter 120, Laws of 1911, repeals Sec. 1682, Revised Codes of 1907, and many other sections dealing with the duties of the state coal mine inspector, and attempts to put in force and effect what is designated "a coal mining code." By the terms of said act it is not effective until ninety days after its approval by the governor and it appears to have been so approved March 7th, 1911.

Section 97, of said act in dealing with the duties of the coal mine inspector requires him to investigate accidents occurring in coal mines in all cases of loss of life; and it authorizes him to make such original and supplemental investigation concerning same and the cause thereof as he may deem necessary. And in this connection he is authorized to compel the attendance of witnesses and administer oaths and it is expressly provided that the cost incident to such investigation made by him shall be a charge against the county in which such accident occurs.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.