

Steam Boilers, Placing in Use Without Inspection. Steam Boilers, Selling Without Inspection.

A steam boiler cannot be placed in use by purchaser without first being inspected by the boiler inspector; and no person has a right to sell within this state a boiler which has been in use and is out of service without first having the same inspected.

January 25th, 1912.

Hon. Edw. C. Mulroney,
County Attorney,
Missoula, Montana.

Dear Sir:

I acknowledge receipt of your letter of January 15th requesting me to give you my official opinion upon the following question:

May the owner of a stationary boiler or steam engine (other than those exempted by Sec. 1655) who places such boiler or engine in use without first notifying the state boiler inspector and having it inspected and securing a certificate of such inspection be prosecuted therefor, presuming that the engineer who operates the boiler or engine is a duly licensed engineer in this state?

Under the provisions of Sec. 1643, Revised Codes, the inspector of boilers must inspect all steam boilers and steam generators before the same are used, except in the case of new boilers, which must be inspected within ninety days after they are put in use, unless accompanied by a certificate that such boiler has been inspected by a regular state inspector, and all boilers must be inspected at least once in every year.

This section, if it means anything at all, prohibits any person from putting in use any boiler, except a new boiler, unless the same has been inspected by a regular state inspector. There appears to be no general penalty in the Article in which this section is found which would cover the case of a person operating a boiler before the same has been properly inspected, but under the provisions of Sec. 1658, Rev. Codes, all violations of the provisions of the Article upon the inspection of boilers are provided for in Sec. 8444 to 8446 and 8468 of the Penal Code. Sec. 8468 of the Revised Codes provides that every person who violates any of the provisions of Art. XV, Chap. 3, Title I, Part III, of the Political Code, relating to boiler inspection, except as otherwise provided is guilty of a misdemeanor. The Article referred to in this section does not deal with the inspection of boilers, but it was evidently the intention of the Legislature that it should refer to boiler inspection and while there is some doubt as to whether or not this section will be construed to refer to the general title of boiler inspection in which Section 1643, above referred to, is found, yet you are advised that if a case presents itself where a person installs a boiler which has not been inspected and attempts

to operate the same, that he could be prosecuted under Section 1643 and 8468, Revised Codes.

Under the provisions of Sec. 8445 of the Revised Codes, every owner, renter or user of a steam boiler, who uses a boiler or steam engine which has become unsafe from any cause is punishable by imprisonment in the county jail not exceeding three months, or by a fine not exceeding \$250.00, or both. If a person should place a boiler in operation contrary to the provisions of Sec. 1643, above referred to, and persons should be injured thereby, he would certainly come within the provisions of Sec. 8445 for the reason that if the boiler was not unsafe no one could have been injured by reason of the fact that he had placed it in operation.

Under the provisions of Sec. 1659, Revised Codes, any person who offers for sale within this state a boiler which has been in use and is out of service, or who brings into the state and places in service any such boiler which has heretofore been in use in any other state, without first notifying the boiler inspector and having such boiler inspected and securing from the inspector a certificate of such inspection, shall be punished by a fine of not less than \$100.00, nor more than \$500.00, for each offense. Under the provisions of this section the person who offers for sale within this state any boiler which has been in use and is out of service; and any person who brings into this state and places in service any boiler which has been in use and is out of service, without first notifying the boiler inspector and securing a certificate of inspection may be prosecuted and fined as provided by the section. In my opinion this section does not relate to "defective" boilers but includes any boiler which has been in use and is out of service.

You are, therefore, advised that the person who sells, or offers for sale, any boiler in this state which has been in use and is out of service, without having the boiler inspected, is subject to prosecution under this Section 1659, Revised Codes.

You are further advised that under the provisions of Sec. 1657 and Sec. 8444 of the Revised Codes, a person who operates a stationary or steam boiler, other than those exempted by Sec. 1655, Revised Codes, without an engineer's license may be punished as in these sections provided; and this would apply as well to the owner, renter, or user of a steam engine or boiler by whom an unlicensed engineer is employed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.