

Engineer at Coal Mine, Hours of Labor of.

The employment of a hoisting engineer at a coal mine for a period of nine hours a day, he being engaged in the actual running or operating of a hoisting engine only seven hours out of that period, although his shift consists of nine hours, is not violative of any law in force in this State regulating the hours of labor for such engineers.

June 3rd, 1913.

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

Dear Sir:

Complying with your request for an opinion based upon a statement of facts contained in a letter addressed to your department under date of May 19, 1913, by Jack Sewell, Secretary Local Union No. 858, United Mine Workers of America, beg leave to advise as follows:

The statement of facts in the communication referred to is to the effect that at the boiler house of the M. C. I. company of Washoe, Montana, the force of engineers formerly consisted of three men, but that now only one engineer is employed, and the only reason assigned therefor is "on account of the nature of circumstances at the time." It is stated further that the engineer in question is compelled to work nine hour shifts, and that his work consists of operating a hoisting engine used for hoisting coal about seven hours a day, and that the other time is spent in preparing for work in the fore part of the shift and on leaving the boiler. Upon this meager statement I am asked to render an opinion as to the legality of this employment. No mention is made as to the number of men employed underground at this place nor is the horse power set forth, nor is any averment made with respect to the number of hours in each twenty-four of each day the engine in question is operated. Ordinarily all of these facts should be made to appear, but in the present case it appears by inference that only one shift in each twenty-four hours is run. The statutory regulation of hours of labor in such instances is to be found in Secs. 1731 to 1735 inclusive, Revised Codes of Montana of 1907. In the section first mentioned it is made unlawful for any engineer or other person to run or operate for more than eight hours in twenty-four any first motion or direct hoisting engine in use in any mine, or run or operated for more than said length of time any geared or indirect hoisting engine in any mine in which fifteen or more men are employed underground. This act only applies to such plants as are in operation sixteen or more hours in twenty-four hours. Sec. 1732 makes the employer liable for a violation of the provisions of the section just referred to, and Sec. 1733 fixes the penalty. In Sec. 1734, a later act, it is made unlawful for any person or persons, company or corporation to operate or handle, or to induce, persuade or prevail upon any person or persons to operate or handle

for more than eight hours in twenty-four hours, any hoisting engine at or in any mine. It is provided, however, that the act shall apply only to such plants as are in continuous operation or are operated sixteen or more hours in twenty-four hours of each day, or at or in any mine where said hoisting engine developed fifteen or more horse power, or at or in any mine where there are fifteen or more men employed underground in twenty-four hours of each day. The following section fixes the penalty for a violation of the provisions of the section just referred to.

In the statement of facts it appears that the engineer in question runs, handles or operates the hoisting engine only seven hours a day, and that the remaining two hours are consumed in getting ready to operate the engine, and in work about the boiler room, after the actual work of hoisting has ceased. It is obvious, therefore, that there is no violation of the statutory provisions to which attention has already been called, and unless there be a further provision of law which might apply to the case in question it is manifest that the engineer is without a valid complaint. By reference to Sec. 1739, Revised Codes, it is found that provision has been made as follows:

"A period of eight hours shall constitute a day's work on all works or undertakings carried on or aided by any municipal, county, or state government, and on all contracts let by them, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing or treatment of coal."

The foregoing is the only law in force which might be made applicable to the case in question, and it is evident from a reading of the section that it can not be made to cover the case of this engineer, for from the statement of facts he is not employed in a mill or smelter for the treatment of ores, nor is he employed underground, nor is he engaged in washing, reducing or treating coal.

His employment being entirely above ground, and he being engaged in the actual running or operating of a hoisting engine only seven hours a day, though his shift consists of nine hours, I am of the opinion that his employment is lawful and that his employer is not violating any law in force in this state regulating the hours of labor.

Yours very truly,

D. M. KELLY,

Attorney General.