

Convicts, Employment of on Public Works of State. Board of Prison Commissioners, Employment of Prisoners by. Employment, of Prisoners.

Under provisions of the state constitution, and authority directly given to the board of prison commissioners, the employment of prisoners in the construction of buildings at the state tuberculosis sanitarium is not in violation of any law

of this state, but is within the letter and spirit of the laws of the state.

July 28th, 1913.

Hon. S. V. Stewart,  
Governor of Montana,  
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication of the 25th instant, enclosing letter from the Montana State Federation of Labor, and submitting to me the question as to whether any law is being violated in the use of convicts for the construction of the state tuberculosis sanitarium at Warm Springs.

A careful examination of the laws of this state has failed to disclose to me any law prohibiting the employment of prisoners committed to the state penitentiary upon public works of this state. The only law which would seem, or which could possibly be construed to limit such employment of prisoners is Chap. 32 of the Laws of the Eleventh Legislative Assembly of Montana, which prohibits the sale of prison made goods without marking them with the words "Prison made." However, the question of the sale of goods is not involved here, and this law has no bearing upon the subject in hand.

Upon the other hand, the Constitution of the State of Montana provides as follows:

"Laws for the punishment of crime shall be founded upon the principle of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death."

Art. 3, Sec. 24, Constitution of Montana.

Here, the fundamental law of the state provides for reformatory measures rather than those of a vindictive or expiatory character. Sec. 9717, Revised Codes of Montana, is in part as follows:

"The board has power to make all needful rules and regulations in regard to the management of the prison, the discipline of the convicts and the conduct and compensation of the guards and assistants."

Further than this, the board is directly given the power to employ prisoners at mechanical pursuits when it may appear to them to be for the best interests of the state and the prisoners. This power is found in Sec. 9728, Revised Codes of Montana:

"The board may, in its discretion, cause the prisoners or any number of them to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any material that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and the board shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best serve the interest of the state and the welfare of the prisoners. But neither

the board nor the warden must let by contract to any person the labor of any convict in the prison."

Sec. 2729 of the Revised Codes directly empowers the board to employ convicts without the walls or enclosures of the state prison:

"If at any time, the board is of the opinion that it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings, or otherwise where they may be profitably employed, it has power to so employ such labor; it must in such case direct the warden accordingly in writing, and cause a record of such order to be entered at length on the records of the board."

In view of the power lodged in the board in the sections quoted, the legislature of the state has by Sec. 9731 extended the state prison to any place where prisoners may be employed:

"The state prison is hereby declared to extend to and over any place or places of employment of the convicts without the walls or enclosures of the prison, at which convicts may be employed."

In view, therefore, of the policy of the law in regard to prisoners, as indicated by the constitutional provision above quoted, and of the authority directly given to the state prison commissioners to employ convicts at mechanical pursuits and hard labor, either within or without the walls of the state prison, and to furnish materials for the purpose of such labor, and in view also of the humane doctrine of reformation involved in this scheme of law, you are advised that, in my opinion, the action of the state board of prison commissioners in employing certain prisoners from the state prison in the construction of buildings at the state tuberculosis sanitarium is not in violation of any law of this state, and that it is a matter entirely within the discretion of the state board, and entirely within the letter and the spirit of the laws of the state.

Yours very truly,

D. M. KELLY,  
Attorney General.