

School Districts, Janitors in. Janitors, Hours of Employment of.

A school district is not intended to be included within the term "state, county or municipal government," therefore the provisions of Sec. 1739, Revised Codes of 1907, do not apply to school districts in the employment of janitors.

September 5th, 1913.

Hon. Robert C. Stong,
County Attorney,
Billings, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 13th ultimo, submitting for my opinion the question as to whether the provisions of Sec. 1739, Revised Codes of Montana, 1907, providing that

"A period of eight (8) 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,"

Applies to school districts in the employment of janitors.

It is important in considering this question to notice at the outset the language used by the legislature in the section under consideration. It is made applicable to all works or undertakings carried on or aided by any municipal, county or state government. The real question to be decided naturally resolves itself into deciding as to which of these classifications, if any, a school district falls. Dillon on Municipal Corporations defines a municipal corporation as:

"The incorporation by the authority of the government of the inhabitants of a particular place or district, and authorizing them in their corporate capacity to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concerns. This power of local government is the distinctive purposes and distinguishing feature of a municipal corporation proper."

The author then distinguishes between such a corporation and a public or a quasi public corporation, the principal purpose of whose creation is as an instrumentality of the state and not for the regulation of the local and special affairs of a compact community, and points out that the latter class are most ordinarily organized under general laws of the state and that they are but parts of the state government. To such a class belong counties, townships and school districts in Montana. They are organized under general laws of the state and are instrumentalities created by the legislature for the purpose of carrying out the state law. It is clear from what has been said that school districts cannot be properly classed as municipal corporations or municipal government, as that term is used in the section of the code quoted.

The question then arises as to whether they are such a portion of the state government as to be included within the term "state government" as it is used in the act. It is my opinion that they were not intended to be so included, for the code uses the term "county government," and county governments are as much instrumentalities of the state government as school districts are, and if the legislature had intended to make the law applicable to every instrumentality of the state, it would have either left the implication to be drawn by using only the term "state government" or by naming townships and school districts as well as counties in the enumeration.

I am aware that this opinion does not agree with the case of *State v. Wilson*, 69 Pacific, 172, cited by you, but it is to be noticed that the Kansas statute uses the words "county, city, township or other municipality," a broader and more inclusive designation than is used in our statute. Many well reasoned opinions hold that school districts, being created and continued only for educational purposes and not for the purpose of exercising any of the functions of government, are not municipal corporations in their nature or purpose.

State v. School Trustees, 78 Ill. 136.

Heller v. Strummel, 52 Mo. 309.

You are, therefore, advised that the provisions of Sec. 1739 of the Revised Codes of Montana of 1907 do not apply to school districts in the employment of janitors.

Yours very truly,

D. M. KELLY,
Attorney General.