

**Certificated Mine Foreman, Authority of in Coal Mines.
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The man employed as foreman in charge of the underground work of a coal mine must possess the qualifications required by the Mining Code, and have authority to hire and discharge men in emergency cases where the safety of the workmen require it. He should have absolute authority to determine all questions of prosecuting the work where the immediate safety of the miners is involved.

February 1st, 1913.

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

Dear Sir:

I beg to acknowledge receipt of your favor of the 28th ult., to the following effect:

"Would it be lawful, where a certificated mine foreman was required and employed, for a machinist, outside foreman, superintendent, manager or owner of a coal mine or other person or persons designated by the management, to assume control of, direct, supervise the work of, hire or discharge and otherwise assume control of any department of the inside employes—other than haulage—without being in possession of a certificate of competency or a permit issued by the proper authorities?"

I understand your question to refer to what powers of supervision an uncertificated superintendent may exercise over a certificated foreman who is in charge of the underground work of the mine. I call your attention to Sec. 104, Subdiv. G, of Chap. 119, Laws of 1911, defining mine foremen:

Mine Foreman.—A mine foreman is a person who is charged with the general direction of the underground work, or both the underground work and the outside work, of any coal mine, and who is commonly known and designated as mine boss."

The statute requires that the mine foreman must have a certificate from the board of examiners.

Secs. 28 to 36, Chap. 119, Laws of 1911.

It therefore appears from the statute that the "person who is charged with the general direction of the underground work must have a certificate from the board of examiners." In construing these provisions of the statute we should keep in mind the general purpose and policy of the act, which is the protection of the life and limb of the miner. Obviously, there was no intention on the part of the Legislature to interfere with the rights, powers or privileges of the mine owner, except as the same became necessary for the protection of the miners from injury or death. To carry out this purpose the act requires that a competent person, certified as such by the board of examiners shall have "the general direction of the underground work." In my opinion the certified foreman should have absolute authority to determine all questions of prosecuting work where the immediate safety of the miners is involved. He should have authority to determine the safest method of removing the coal and of how to make and keep the place where the miner is working safe. It does not, however, appear to me that the hiring and discharging of men is any necessary part of the "direction of the underground work," or has any necessary connection with the safety or protection of the underground workmen, and I can see no objection to an uncertificated superintendent exercising such powers; nor do I see any objection to an uncertificated superintendent exercising other powers which in no manner affect the safety of the underground workmen, provided that men employed must possess the qualifications required by the mining code and the foreman in charge must have authority to hire or discharge men in emergency cases where the safety of the workmen require it. I am unable to give you any more definite general rule

than this at this time, but as particular cases arise you may refer them to this office.

Very truly yours,

D. M. KELLY,
Attorney General.