

Eight Hour Law, Application of to School Districts. School Districts, Application of Eight Hour Law to.

Eight hours constitutes a day's labor on all works or undertakings carried on or aided by the State, County or Municipality; held to include school districts.

August 10, 1914.

Hon. W. J. Swindlehurst, Commissioner,
Department of Labor and Industry,
Helena, Montana.

Dear Sir:

I have your letter of the 6th inst., wherein you submit for my consideration and opinion the following question:

"Does Section 1739, Article 5, Revised Codes of Montana, make any distinction between school districts and county, state and municipal government in the application of this law with relation to all contracts carried on or let by them? While investigating several violations of the eight-hour law on public works in Havre, Hill County, this week my attention was called to an alleged violation of this statute by a contractor and workmen engaged in the construction of a public school building, contract for the same having been let by the officers of the school district."

Sec. 400 of Chap. 76, Session Laws of 1913, provides:

"The term 'School District' as used in this article is declared to mean the territory under the jurisdiction of a single board designated as Board of Trustees."

In 35 Cyc., p. 813, the school district is defined as follows:

"A school district is a political or civil subdivision of the state formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children."

Sec. 1739 of the Revised Codes of Montana of 1907 provides that the 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. The section referred to was enacted as Sec. 1 of Chap. 108 of the laws of 1907, and the title of the act conforms to the language of the section. The term "school district" is not employed either in the title or the body of the act.

In the case of *State v. Wilson*, 69 Pac. (Kan.) it was held that a school district is a municipality within the meaning of the eight-hour law enacted by the Kansas legislature. In the course of the opinion the court said:

"Strictly speaking, cities are the only real municipal corporations in this state. We have no doubt, however, that the lawmakers, by the use of the word 'municipality' in the connection in which it is employed in the eight-hour law, intended to include school districts. In *Re Intoxicating Liquor Cases*, 25 Kan. 751, 763, 37 Am. Rep. 284, Mr. Justice Brewer quotes approvingly from the case of *Holmes v. Carley*, 31 N. Y. 289, 290, as follows: 'A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers, and such construction ought to be put upon it as does not suffer it to be eluded.' In *State v. Grimes* (Wash.), 34 Pac. 836, it is held that a school district is a municipal corporation within a constitutional provision which directs that the permanent school fund 'may be invested in national, state, county or municipal bonds.' In Iowa 'municipal corporations' were authorized to issue bonds for certain purposes. It was decided that school districts were included. *Curry v. District Tp.*, 62 Iowa, 102, 17 N. W. 191. Also, see *School Dist. v. Thompson*, 5 Minn., 280 (Gil. 221). We are clear that it was the intention of the legislature to include employes of school districts within the provisions of the eight-hour law, and that it has done so by the use of the word 'municipality' in the statute."

However, in this state it is held that only incorporated cities and towns are municipal corporations, and that counties may not be classed as such. The Supreme Court said:

"The county is a body corporate (Sec. 2870, Rev. Codes), so likewise is a school district (Sec. 848)."

Hersey v. Neilson et al., 47 Mont. 132.

The foregoing case expressly holds that a county is a public corporation, a political subdivision of the state for governmental purposes, and, by inference at least, a school district is to be classified in a like manner.

It will be noted, however, that the eight-hour law embraces all works carried on or aided by the state, county or municipality. In view of this language it seems clear that it was within the intention of the legislature to include within the purview of the statute all works or undertakings carried on or aided by the public and while the Kansas case above expressly holds that the eight-hour law is applicable to school districts because of the use of the word "municipality" in the statute, I am of the opinion that whether or not a school district in this state may be classified as a municipality for the purposes of bringing it within the statute, it seems clear that school districts should be included because the law is made to apply to works carried on or aided by the state or county.

Yours very truly,

D. M. KELLY,
Attorney General.