

Eight Hour Law, Violaters of. Employer, Who Is. Liability of Employer, for Violation of Eight Hour Law.

Any person occupying the position of authority over the employee and exercises control over him is the "employer" and comes within the provisions of Section 1739, 1740 R. C. 1907.

August 15th, 1914.

Hon. G. J. Jeffries,
County Attorney,
Roundup, Montana.

Dear Sir:

Recently you requested an opinion upon the question whether, under the provisions of Secs. 1739 and 1740, Revised Codes of Montana of 1907, a representative of a corporation having a contract with a municipality for the construction of public works could be held liable for a violation of the eight-hour law, where it appears that the representative of the corporation has under his supervision and control the employees of the corporation engaged in the construction of the public work.

In reply I beg leave to advise that the penalty for violating the eight-hour law is directed against every person, corporation, stock company, or association of persons, who violates any of the provisions of Section 1739. The Supreme Court in *State v. Hughes*, 38 Montana, p. 468, has laid down the rule that the contract relation of employer and employee must exist, but the intention is that as applied to the employer the penalty for a violation must nevertheless fall upon the person who causes the employee to violate its provisions. In other words, the person occupying the position of authority over one engaged as an employee and exercises control over him is the "employer" and comes within the prohibition.

In view of the construction thus placed upon this statutory provisions by the Supreme Court, I am clearly of opinion that where a superintendent or boss employed by a corporation to superintend the construction of the work carried on or aided by a municipality has under his control, direction and management the employees of said corporation, and either suffers, permits, or directs such employees to work more than eight hours in any one day, he is guilty of a misdemeanor and subject to the penalty prescribed by the provisions of Sec. 1740.

Yours very truly,

D. M. KELLY,
Attorney General.