

Deputy State Coal Mine Inspector, Necessity for Appointment of.

The determination of this question is left to those having more definite knowledge of the subject.

December 23, 1914.

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

Dear Sir:

I have your communication under date December 18, 1914, submitting for my consideration a letter from the Board of Examiners of Applicants for Coal Mine Inspector, in which they enquire as to the advisability of appointing a Deputy State Coal Mine Inspector. This enquiry and their recommendation is hinged upon the number of times it is required that coal mines be inspected within a given period and the kind and character of mines to be inspected, the question finally reducing itself to that of whether small mines or excavations are of such a nature as to require inspection under the Act. The letter states that at present there are not to exceed thirty coal mines in operation that would be

considered producing mines; i. e. mines that are producing and selling coal as a legitimate or principal business of the owner or lessee. There are, however, scattered over a large portion of this state, possibly fifty or sixty small mines which produce from twenty-five to two hundred and fifty tons annually, some of which may be operated by the owners for the sale of coal among neighboring ranchers or local wagon trade; others, it may be, where the purchasers are allowed to go into the mine, dig their own coal and haul it away, paying the owner a royalty or so much per ton for the coal taken. None of these mines work regularly all through the year; some of them only operate a very few days in the year, as occasion or demand arises. It is then requested that this office make a ruling upon the question of whether the State Coal Mining Code makes it incumbent on the State Coal Mine Inspector to visit this latter class of mines every three months.

Sec. 104 of Chapter 120 of the Session Laws of 1912 defines a coal mine as follows:

"In this Act the words 'mine and coal mine' used in their general sense are intended to signify any and all underground parts of the property of a mining plant which contribute directly or indirectly under one management to the mining or handling of coal."

Looking further in the Act we find Sec. 5, in defining the duties and powers of the coal mine inspector, using this language:

"The State Coal Mine Inspector shall have the right, and it is hereby made his duty, to enter, inspect and examine any coal mine, or any shaft, drift or slope in the process of sinking for the purpose of mining coal in this state * * *"

It will be noticed that the definitions and terms used in the Act are quite broad and include almost any kind of hole or excavation made for mining coal, apparently without much limitation as to the number of men employed or the amount of product taken. However, under the definition, the mine must be under "a single management." This implies a manager in charge of operations. With this limitation the term "mine" would not apply to an excavation where the coal was taken out without any direction of a manager, or where there was no one in charge to control the operations of mining. The question of whether a particular place is a mine is largely one of fact to be determined in each case. The law probably applies to cases where coal is dug and sold under the supervision of the person owning or having control of the property, regardless of the amount or the number of men employed. It is doubtful if it does apply to places, or excavations or holes where each person goes and does his own mining, since in such cases the mine is not managed or the person owning or controlling the property has no direct control over the persons working therein, or the manner in which the work is done.

The letter of the Board does not give any definite idea as to the proportion of these small mines which would come under the rules, and I must, therefore, leave the determination of that question to those having more definite knowledge of the subject.

Yours very truly,

D. M. KELLY,
Attorney General.