

**Workmen's Compensation Law, Hazardous Occupations.
Hazardous Occupations, What May Become. Industrial Accident Board, Power of. Power, of Industrial Accident Board.**

Such of the employments enumerated in Sections 4 (b), 4 (c), 4 (d) and 4 (e) of the Compensation Act are hazardous as a matter of law. The legislature by the enactment of Section 5 recognized that occupations other than those ben- tioned specifically are, or may become hazardous. When, therefore, an application is made by an employer to become bound by the provisions of plan No. 1 or plan No. 2, and the works or occupation in which he employs labor are not such as are hazardous as a matter of law, the Board has the in- herent power to determine the facts.

July 12, 1915.

Hon. A. E. Spriggs,
Chairman Industrial Accident Board,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date setting forth that you have received from various insurance companies, authorized to do business in this State, something over one hundred policies of em- ployers, under the Workmen's Compensation Act, who are not engaged in hazardous occupations as defined by the law; such for instance, as livery stables and farm and livestock companies. You state that the board is in doubt as to what should be done relative to accepting or rejecting such policies. Section 4 (a) of the Compensation Act pro- vides:

"This Act is intended to apply to all inherently hazardous works and occupations within this State, and it is the intention to embrace all thereof in Sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said

sections are hereby declared to be hazardous."

The works and occupations enumerated in the sections referred to in Section 4 (a) are hazardous as a matter of law, but the legislature has recognized that employments other than those specified are, or may become hazardous. Section 5 declares:

"If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall become under this Act and its terms, conditions and provisions as fully and completely as if hereinbefore enumerated."

It will be observed further that in the definition of "employee," as given in Section 6 (J), any person is included who is engaged in the employment of an employer carrying on, or conducting any industry which may come within Section 5. The determination of the proposition as to what employments may or may not be embraced within the provisions of this Section, rests in fact, and not in law. For instance, livery stables are not included in the specific enumeration of hazardous industries, and may be included, if at all, by virtue of the general language of Section 5. It is probable that in a given livery stable, certain employments may be just as hazardous as any specifically covered by the Act, while in another no employment will ever become hazardous, though the occupations in both instances be substantially similar. In the one, high-spirited, unbroken and unruly horses may be handled in such a manner as to render employment therein extremely hazardous; and in another only well broken and gentle horses be kept in a manner that the handling thereof would never be attended with appreciable hazard. A question of fact, it can readily be seen, must be determined in each particular instance, and such determination would be effective only as to the particular case under investigation, and could scarcely operate to include other employments of the same general class.

When, therefore, an application is received by your honorable board from an employer of labor who seeks to be bound either by plan No. 1 or plan No. 2, and the works or occupations in which he employs labor are not such as are designated hazardous by law, you have the inherent power to determine whether the provisions of Section 5 are applicable to his particular case; and if not, to reject his application and make known to him that he may by mutual consent of himself and his employees become subject to the provisions of plan No. 3, Class 27.

All policies of insurance received by your office which undertake to insure employers engaged in non-hazardous pursuits, save such as may be declared by your Board to be hazardous and within Section 5 of the Act, should be rejected.

Yours very truly,

J. B. POINDEXTER,

Attorney General.