Labor—Child Labor—Employment—Statutes.

In a prosecution under section 3095 R. C. M. 1921, it is necessary to allege and prove that a child under 16 years of age was knowingly employed.

Section 3098 R. C. M. 1921, does not conflict with section 3095. The former section makes it an offense to employ a child without an age certificate.

Barclay Craighead, Esq., June 29, 1926.
Division of Labor,
Helena, Montana.

My dear Mr. Craighead:

You have requested my opinion regarding the construction of sections 3095 and 3098 R. C. M. 1921 relating to the employment of children under sixteen years of age.

Section 3095 R. C. M. 1921 prohibits every person from *knowingly* employing children under sixteen years of age in certain designated kinds of work. As indicated by the supreme court in Fallon vs. Chicago, etc., Ry. Co., 61 Mont. 130, it is indispensable in charging a violation of the provisions of the above act to allege that the child was knowingly employed.

Section 3098 was enacted at the same time as 3095, being a part of chapter 99 of the session laws of 1907. This section defines a wholly different offense from that prohibited by section 3095. Section 3098 makes it a misdemeanor for any person to employ a child without the age certificate designated in said section. Under section 3098 the question of knowledge on the part of the employer that the child is under sixteen years of age is not involved. In a prosecution under the latter section it would not be necessary to allege or prove that the employer knew that the child was under sixteen years of age. All that would be necessary would be to show that the child was in fact under sixteen and was employed without an age certificate.

It is my opinion, therefore, that these two sections are not conflicting; they are rather coordinate acts defining two different offenses. A prosecution could be instituted under either one of them accordingly as the facts of the case warranted.

Very truly yours,
L. A. FOOT,
Attorney General.