

**Schools—Workmen's Compensation Act—Janitors—Hazardous Occupations.**

School districts are required to come under the provisions of the compensation act and to pay compensation coverage where any of their employees are engaged in a hazardous occupation.

Whether the occupation of a janitor is a hazardous one is one of fact, depending upon the duties that the janitor is required to perform in each particular case.

Jerome G. Locke, Esq.,  
Chairman, Industrial Accident Board,  
Helena, Montana.

December 20, 1924.

My dear Mr. Locke:

You have submitted to this office the question whether a school district employing a janitor comes within the provisions of the compensation act and is required to pay compensation coverage.

Section 2840, R. C. M. 1921, provides, in part, as follows:

"Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. \* \* \*"

Section 2886 defines a public corporation as follows:

"'Public corporation' means the state, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village."

Under the provisions of this section it will be observed that a school district is especially mentioned as one of the public corporations to which the compensation act is applicable. I know of no provision of the statute which conflicts with the foregoing provisions, unless it be section 1205, R. C. M. 1921. This section reads, in part, as follows:

“County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this act, and for no other purpose, except that in any district any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine months’ school, on a vote of the qualified electors of said district may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage, or barn. \* \* \*”

This section, except for a slight change, was a part of chapter 76, session laws of 1913, and a part of the statutory law prior to the enactment of the workmen’s compensation act, and was re-enacted as a part of chapter 196, session laws of 1919.

However, it is my opinion that the foregoing provision was not intended to limit, in any way, the application of sections 2840 and 2886 to school districts.

The terms, conditions and provisions of the compensation plan No. 3 shall be exclusive, compulsory and obligatory upon both employer and employee. (*City of Butte v. Ind. Acc. Bd.*, 52 Mont. 75; 156 Pac. 130.)

That school districts may be compelled to come under the provisions of compensation acts, see *Woodcock v. Board of Eductaion*, 187 Pac. 181.

Under the provisions of these sections (2840 and 2886), school districts are required to come under the provisions of the compensation act, where any of their employees are engaged in an occupation designated as hazardous.

The board has, under the provisions of sections 2852 and 2992, included in class 9 of section 2990 janitors as engaged in a hazardous occupation. Has the board a right to do this? In other words, is the work of a janitor hazardous within the meaning of the compensation act? The occupation of a janitor is not one of the occupations designated as “hazardous” by the provisions of the act. Whether it is in fact hazardous would depend entirely upon the particular duties required to be performed by the janitor.

In the case of *Page v. New York Realty Co.*, 59 Mont. 305, 196 Pac. 871, the supreme court had before it the question of whether operating a passenger elevator was a hazardous occupation within the terms of the act. The court said:

“Under the rule *cjusdem generis*, the general language embraced in section 5 of the act under consideration does not, in our opinion, embrace the operation of passenger elevators, not being expressly enumerated in the provisions of the act as hazardous nor of like character to those specified. That section has

reference only to such employment or industries, other than those specifically named, as are of the same general character then existing or which may subsequently arise."

The court further said:

"It is our opinion that whether the employment of a person or any accident comes within the provisions of the act is a question of law rather than one of fact."

The court further quoted the following from the case of *Courter v. Simpson Construction Co.*, 264 Ill. 495, 106 N. E. 353:

"The industrial board has no jurisdiction to apply the act to persons or corporations who are not subject to its provisions nor to an accident not within the provisions of the act. If it did so it would not be 'acting within its power'."

In the ordinary case of an occupation the duties pertaining to the occupation can be defined, but this is not true as to janitors, especially where they take care of large buildings.

There has recently been called to the attention of the writer the regulations governing janitors in one of the large first-class school districts of the state. Omitting the minor details, he is required to perform among others the following duties:

"3. They shall have their respective buildings heated and ready for occupancy at 8 o'clock a. m.

"4. They shall thoroughly sweep each room, hall, stairway and outbuilding daily, and remove all dust each morning, with a cloth, from the desks, tables, chairs, seats, ledges, etc. They shall wash the windows and scrub the floor and woodwork as often as may be necessary. Each room and hall shall be thoroughly scrubbed and oiled before school opens in September and during the Christmas vacation.

"5. Janitors shall keep the walks on school premises free from snow, ice and mud. They shall make all minor repairs about the school premises and buildings that do not require the skill of a mechanic. \* \* \* It shall be the duty of the janitors to wind the clocks, to lock doors and windows, to receive coal and wood, to remove all rubbish from the grounds.

"6. Janitors shall keep the heating apparatus in proper condition, clean furnaces, flues and pipes, and see that the boilers and fittings are kept in good repair at all times. \* \* \*

"15. The janitor of any building may be called upon to assist in any special work in any other building in the city on Saturday."

The foregoing are sufficient to show that the duties of the janitor, as outlined in this particular school district, are clearly within the provisions of the compensation act.

His duties with reference to the operation of heating plants, cleaning furnaces, flues and pipes, and seeing that the boilers and fittings are kept in good repair are clearly within the provisions of the act.

There is no doubt that a janitor, whose duties are in connection with a small building where he is merely required to keep the building clean, and to keep up the fires in stoves or hot air furnaces, is not performing any hazardous occupation.

The question is, therefore, one of fact in the first instance to determine what his particular duties are, and it then becomes a question of law as to whether the particular duties required of him are hazardous and come within the compensation act.

In the instant case the school district is, no doubt, a small one, the janitor being paid \$60.00 per month, and it is not at all likely that his duties are at all hazardous. Therefore, the district is not required to pay compensation coverage.

Very truly yours,

L. A. FOOT,  
Attorney General.