

September 25, 1935.

Mr. J. E. McKenna
County Attorney
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You have submitted the following:

"Chapter 76 of the Laws of 1935 provides for the number of hours drivers or attendants of motor busses shall be compelled to work in the 24-hour period, or one day.

"Under the provisions of the said Chapter would motor bus drivers employed on a commission fall under the provisions of the said Chapter 76?

"In your opinion would Chapter 76 above mentioned, apply to motor bus drivers who are paid by commission on the business carried on, and who also furnish their own trucks?"

Section 1, Chapter 76, Laws 1935, reads as follows: "Drivers or attendants of motor busses employed in the State of Montana, shall not be employed for more than eight (8) hours in the twenty-four (24) hour period and drivers or attendants of motor busses shall be allowed a rest of at least twelve (12) hours between the completion of their services in any twenty-four (24) hour period and the beginning of their services in the next succeeding twenty-four (24) hour period. * * *"

Chapter 76 is an act enacted by the State under its police powers primarily for the protection of the traveling public, as well as the drivers and attendants on the busses. The legislature evidently thought it was unsafe for a driver or an attendant of motor busses to be engaged continuously in such occupation for more than eight hours.

So far as concerns the safety of the driver and attendant, or the passengers on the busses, the nature of the contract under which the driver and attendant operate is immaterial. It does not make any difference whether they are paid in wages, commissions, or from the profits in operating their own busses.

The word "employ" is defined by Webster's dictionary as follows: "To enfold, involve, implicate, engage; 1. to employ, to enclose, enfold, involve; 2. to make use of, as an instrument,

Opinion No. 173.

**Motor Busses—Labor, Hours of
Drivers and Attendants—
Motor Vehicles.**

HELD: Chapter 76, Laws of 1935, covers all drivers and attendants, whether paid for their services in cash or in commissions, or whether driving their own busses.

means or material; to apply, use; as to employ the pen in writing, bricks in building, words or phrases in speaking; 3. to occupy; busy; devote; concern; as to employ time in study; to employ one's energies to advantage; 4. to make use of the services of; to give employment to; to intrust with some duty or behest; as to employ one hundred workmen; to employ an envoy."

In 20 Corpus Juris 1238 it is stated: "The word (employ) is used in divers significations. Although it usually imports the relation of master and servant, or of employer and employee, this is not the universal rule, and the idea of compensation is not necessarily involved in the term."

As a verb in the past tense applied to persons it is defined: "Engaged, or about to be engaged; engaged in service; engaged or occupied in the performance of work or duties; hired to perform labor; occupied in any handicraft, whether for wages or not, under a master or parent; also either busy or occupied at work, or commissioned and intrusted with the management of affairs; selected or designated; used as an agent or substitute in transacting business. * * *"

Considering the object of the Act, it is my opinion that the legislature used the word "employed" in the broader sense of 'engaged in, or occupied in the performance of work or duties' rather than in the narrow sense importing the relation of master and servant, or of employer and employee.

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally

reasonable. * * *" (59 C. J. 961, Section 571.)

See also: *Mills v. Stewart*, 76 Mont. 429, 247 Pac. 332; *Swords v. Simineo*, 68 Mont. 164, 216 Pac. 806; *State v. Duncan*, 55 Mont. 376, 177 Pac. 248; *Great Northern Utilities v. Public Service Commission*, 88 Mont. 180; 293 Pac. 294; *State v. Callow*, 78 Mont. 308, 254 Pac. 187; *State v. Bowker*, 63 Mont. 1, 205 Pac. 961.

If the narrow construction importing the relation of master and servant, or employer and employee, were given to the word "employed" so as to make the Act apply only to those owners who did not drive their own busses, the Act would be clearly unconstitutional, being in violation of the equal protection clause of the Fourteenth Amendment of the United States constitution. Such a construction should be given to an act so as to render it valid, if fairly possible to do so, and particularly where such construction will give effect to the purpose of the legislature. It is presumed that the legislature intended to act within the scope of its constitutional powers. See: *Public Service Commission v. Helena*, 52 Mont. 527, 159 Pac. 24; *State v. Alderson*, 49 Mont. 29, 140 Pac. 82; *State v. District Court*, 41 Mont. 357, 109 Pac. 438.

The principles of construction above stated are supported by decisions in all jurisdictions. In 12 Corpus Juris 787, Section 220, it is stated: "When reasonably possible, a statute must be so constructed (construed) as to uphold its validity. Indeed, a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts on that score. * * * If a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional, it is the duty of the court to adopt that construction, which, without doing violence to the fair meaning of the language will render it valid. This rule is based on the presumption that the legislature intended to act within the scope of its constitutional powers, and to enact a valid and effective statute. * * *."

For the foregoing reasons it is my opinion that all motor bus drivers and attendants, whether paid in wages or

on a commission basis, or whether they are driving their own busses or trucks, come within the scope of said Chapter 76, Laws of 1935.