

Opinion No. 2.**Labor—Eight Hour Day—Leased
Service Stations.**

HELD: A lessee of a filling station would come within the terms of the eight-hour day law and would not be permitted to work in excess of eight hours per day under the facts submitted.

December 5, 1934.

Mr. E. M. Keeley
County Attorney
Deer Lodge, Montana

We are in receipt of your inquiry as to the interpretation and legality

of Chapter 8 of the Laws of the Extraordinary Session of the Twenty-Third Legislative Assembly, relating to hours of labor. In particular your inquiry raises the question of whether or not the same may be enforced as to leased filling stations.

The objections which you submit to the enforcement of the law as applied to leased filling stations are as follows:

1. That the title of the Act does not include leased filling stations, and that, therefore, the requirement which provides that the law shall apply "in all leased businesses where the lessor dictates the price, also kind of merchandise that is sold" is not within the terms of the title of the Act.

We are informed that in the filling station business it is customary for persons who are wholesalers or refiners, engaged in the distribution of their petroleum products, to own filling stations which are leased to local managers who have some measure of control, but who are required to sell the products at prices fixed by the wholesaler. Such a management partakes somewhat of the nature of independent control, and perhaps to a larger extent it more closely resembles a contract of employment. Taking the latter view of this arrangement, it appears that same may be considered an employment arrangement and within the terms of the title of this law. At least there is not such a variation from the title of the law as would render same invalid upon that ground.

2. It is further urged that this law is unconstitutional in this respect: that it compels a discrimination in the method of handling business where a station is owned by an individual proprietor and where it is leased.

This objection, also, is one which I do not consider would render the law unconstitutional or prevent its enforcement. The fact that it is more difficult, or impossible, to restrict the hours of labor of one who is conducting his own business, where it is possible to restrict the hours of labor of an employee or one in the position of a lessee under the conditions described in this Act, is not such a discrimination as would render the law unconstitutional.

It therefore appears that the law would apply to the relationship described in your letter, and that if the person who requested your opinion should lease the filling station and handle the products as determined by the lessor for the prices to be determined by the lessor, he would come within the terms of the law and would not be permitted to work in excess of eight hours per day.