

No. 43

**WORKMEN'S COMPENSATION—HOSPITAL
CONTRACTS**

Held: Workmen and employer may waive provisions of Section 2917, Revised Codes of Montana, and enter into a mutual contract for medical and hospital services under Section 2907, Revised Codes of Montana, 1935, but such contract must provide for both medical and hospital services for injury and sickness.

Workmen may not enter into contract for medical services and still be entitled to hospitalization under Section 2917, Revised Codes of Montana, 1935.

March 14, 1941

Mr. Ronald V. Colgrove
County Attorney
Musselshell County
Roundup, Montana

Dear Mr. Colgrove:

I have your letter requesting my opinion on the following question:

“Would a contract providing for medical attention and not containing any provision with respect to hospitalization be such a contract as to waive hospitalization as provided in Section 2917, Revised

Codes of Montana, 1935? In other words, in connection with Section 2917, supra, may the employees waive medical attention without waiving hospitalization?

"In view of the agreement between the Montana Coal Operators' Association and the United Mine Workers of America, District No. 27, is it possible for the employees to enter into a contract with a doctor for medical services and hospitalization for themselves and families without waiving the benefits of Section 2917, Revised Codes of Montana, 1935?"

Section 2917, Revised Codes of Montana, 1935, provides that, during the first six months after the happening of the injury, the employer or insurer, or the Board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the Board, not exceeding \$500, unless,

1. The employee refuses to allow them to be furnished, or
2. Such employee is under a hospital contract as provided in Section 2907.

Section 2907, Revised Codes of Montana, 1935, provides, as is pertinent here, as follows:

"2907. Contracts or Agreements for Hospital Benefits, Conditions Governing. Nothing in this Act shall be construed as preventing employers and workmen from waiving the provisions of Section 2917, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee.

"Such hospital contract or agreements must provide for medical, hospital and surgical attendance for such employee for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment."

It will be noted that under Section 2917, Revised Codes of Montana, 1935, the employer, insurer or the Board, depending on the plan, is required to furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed in case of injury arising out of and in the course of employment. This is a duty imposed upon the employer by statute. The statute makes exceptions which will relieve the employer of this duty, to wit: (1) when the injured employee refuses these services, and (2) when the employee is under a hospital contract under the provisions of Section 2907, supra. In other words, as applied to the question here, when the employer is under a hospital contract under the provisions of Section 2907, supra, the employer is relieved of his duty under Section 2917. But Section 2907 permits the employer and workman to waive the provisions of Section 2917 and enter into a mutual contract, and provides what such contract must contain. Therefore, unless the contract contains both hospital and medical services, the provisions of Section 2917 apply.

Our Supreme Court, in discussing these sections in the case of *Murray Hospital v. Angrove*, 92 Mont. 101, 118, 10 Pac. (2nd) 577, had the following to say:

"Section 2907, originally and as amended, gives to the industry the option to 'waive' the provisions of Section 2917, which provides only for hospital, medical and surgical care in case of injuries arising out of and in the course of the employment, but declares that, if this option is exercised, the hospital contract 'must provide for' the attention therein described, 'as well as' for the attention required under Section 2917. In other words, Section 2917 requires the employer, the insurer or the accident fund to pay for the treatment of an employee injured through an industrial accident, but is granted the option to

evade this financial obligation by a hospital contract financed by a deduction from the wages of all employees entitled to the benefits of the contract, provided the contract guarantees to the workmen hospitalization for other bodily affections, 'as well as' for those arising out of and in the course of the employment.

"The meaning of the statute is clear: If the employer would relieve himself of the burden placed upon him by Section 2917, he must provide, not only for the treatment required by that section, but the additional treatment specified in Section 2907, in consideration of the benefit accruing to him and the financial burden placed upon the workmen."

The language of both statutes is plain and clearly expresses the intent of the Legislature. To say that either or both services may be waived would be to read into the statute something that is not there. This we may not do. (*Mills v. State Board of Equalization*, 33 Pac. (2nd) 563, 97 Mont. 13.)

It is therefore my opinion that the contract must provide both medical and hospital services, and the workman may not waive medical attention without waiving hospitalization. It follows, therefore, that your second question must be answered in the negative.

Sincerely yours,

JOHN W. BONNER
Attorney General