

Opinion No. 226.

**Engineer, Hoisting—Hoisting Engineer
—Coal Mines—Mines and Mining.**

Held: Hoisting engineer on any shaft, slope or drift at any coal mines in Montana must be in constant attendance at his engine during working hours when there are workmen underground and may not be assigned any other duties during which time that would interfere or detract from his duties as hoisting engineer and could not leave the attendance of his engine or any time during his shift as such hoisting engineer be out of earshot of signals which might come from the workmen underground.

July 10, 1944.

Mr. A. G. McNaught
County Attorney
Musselshell County
Roundup, Montana

Dear Mr. McNaught:

You have requested an opinion of this office as to the construction of Section 3542, Revised Codes of Montana, 1935, which section of our codes defines the duties of a hoisting engineer in coal mines.

Section 3542, Revised Codes of Montana, 1935, provides in part as follows:

“The hoisting engineer of any shaft, slope, or drift at any mine shall be in constant attendance at his engine during working hours when there are workmen underground . . .”

The foregoing portion of said Section 3542 is clear and unambiguous in its language and is mandatory. Said Section 3542 was enacted as Section 100 of Chapter 120, Laws of 1911, which chapter is entitled in part as follows:

“An Act to Regulate the Operation of All Coal Mines in the State of Montana . . .”

From a reading of Chapter 120, Laws of 1911, which is now Sections 3447-3546, Revised Codes of Montana, 1935, it is readily determinable that it was enacted as a regulator piece of legislation for the benefit of the health and safety of all workmen in the coal mining industry. Penalties are provided for violations of the act or any portion thereof. Therefore, looking at the act as a whole, it is to be recognized as an enactment of public policy which may not be evaded in any of its provisions or waived or compromised in any manner.

The only question which could be raised as to the meaning of said Section 3542 would be the meaning of the word “workmen.”

In 71 Corpus Juris, 176, 177, the word workman is defined as follows:

“In its generic sense, in common speech, or in the usual and popular sense, the word is used to designate a man who is employed in manual labor, or one who is employed in menial labor, whether skilled or unskilled . . . a miner . . .”

Our Workmen’s Compensation Act in Section 2863, Revised Codes of Montana, 1935, defines a workman as meaning every person in this state who is in the service of an employer under any appointment or contract of hire expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all who are connected with or engaged in hazardous occupations, other than independent contractors.

Thus, it is seen that workmen would include all who are in the service of an employer, other than independent contractors, and would include persons working as miners.

Therefore, it is my opinion the hoisting engineer on any shaft, slope or drift at any coal mine in Montana must be

in constant attendance at his engine during working hours when there are workmen underground and under these circumstances such engineer could not be assigned any other duties during such time which would interfere or detract from his duties as hoisting engineer and could not leave the attendance of his engine at any time while performing his duties as such hoisting engineer or be out of earshot of signals which might come from the workmen underground.

Sincerely yours,
R. V. BOTTOMLY
Attorney General