

Opinion No. 68.**Labor—Division of Labor—
Child Labor Age Certificates.**

- Held: 1. It is the duty of the division of labor to issue age certificates to all minors, regardless of age or sex, who may make application therefor.
2. The division of labor has jurisdiction in the enforcement of all laws relating to the employment of minors regardless of age or sex.
3. No child, male or female, under the age of sixteen years, may be employed in any industry or occupation mentioned in Section 3095, Revised Codes of Montana, 1935.
4. Any child, regardless of age or sex, who has obtained a certificate from the commissioner of labor showing him or her to be of the age of sixteen years or older, may be employed in any occupation or industry, so long as such labor does not violate the statutory hours of labor.
5. A minor under the age of sixteen years, may not be employed as a chore boy or cook's assistant, or in any other occupation, if the place of work is situated in, on, or about a mine.
6. A minor, under the age of sixteen years may not be employed by any steam, electric, hydraulic, or compressed air railroad, where the labor of such minor is performed in, on, or about the premises, including shops, depots, tracks, roundhouse, roadbeds, etc.
7. A minor between the ages of fourteen and sixteen years, or any age under sixteen years, may not be employed in any industry or occupation, where machinery is operated.

June 16, 1943.

Mr. Albert H. Kruse, Commissioner
Division of Labor
Department of Agriculture, Labor and
Industry
State Capitol
Helena, Montana

Dear Mr. Kruse:

I have your request for opinion on the following questions and shall answer the same in order of statement:

"(1) Because of the wording of Section 3635, Revised Codes of Montana, 1935, is it not the duty of the Division of Labor to issue all age certificates to minors and/or employers regardless of the age of the minor; and also does not this division have the jurisdiction over the employment of children in any manner regardless of age, sex and occupation? The last part of this question will, of course, depend whether or not conditions of employment, such as maximum hours of employment, minimum wages, etc., are outlined by law for the particular industry or occupation.

"(2) Under Section 3095, Revised Codes of Montana, 1935, is it not true that no child under the age of 16 years may be employed at any of the occupations, or within any of the industries, specifically mentioned?

"(3) So far as any of our state child labor laws are concerned, would it not be possible and permissible for any child, male or female, 16 years of age and older to work at any occupation or within any industry regardless of the conditions of the employment except in respect to maximum hours daily and/or weekly as the case may be, provided that such child obtained an age certificate from this division showing him to be at least 16 years of age?

"(4) May a minor between the age of 14 and 16 years (not 16 years old) be employed as a general chore boy and cook's assistant by a private individual operating a boarding house for a mining concern; the boarding house being situated on the mine property close to actual mining operations? (Re: in, on, or about any mine, Section 3095.)

"(5) Since Section 3095, Revised Codes of Montana, 1935, also prohibits the employment of children under the age of 16 years 'in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic or compressed air railroad'—etc., would this not also mean that no child under the age of 16 years could be employed as a section laborer, track maintainer,

construction of railroad beds; roundhouse laborers or any other work in a roundhouse; servicing passenger trains such as icing and supplying of water and cleaning the cars, washing the windows of the passenger cars; icing freight and express cars; doing general janitor or clean up work in a railroad shop and buildings? In other words, may any child between the ages of 14 and 16 years (not 16 years old) perform any service or labor for any railroad company or concern closely connected with railroad transportation? If so, what occupations could be done by those children 14 to 16 years of age? How about call boys employed by railroad companies?

"(6) May any child between the ages of 14 and 16 years perform any service or labor in a cheese factory, creamery or any other establishment where products are manufactured or otherwise processed in any manner? (Re: Section 3095, 'in, on or about any—workshop, factory'—.)"

As to your first question:

Section 3635, Revised Codes of Montana, 1935, provides:

"The department of agriculture, labor and industry, through the division of labor and publicity, shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, protection of employees, and all laws relating to child labor regulating the employment of children in any manner; it shall also be the duty of such division to administer all the laws of the state relative to free employment offices."

Section 3097, Revised Codes of Montana, 1935, requires the commissioner to compile and preserve in his office, from reports made to him by the county superintendent of schools, as provided by law, a full and complete list of the name, age, date of birth, and sex of each child, and the names of the parents or guardian of each child under the age of sixteen years. Section 3098, Revised Codes of Montana, 1935, requires every child upon attaining the age of sixteen years, who may seek employment, to obtain an age certificate from the commissioner, which certificate must be presented to the employer before such child is permitted to work.

This section requires the employer, upon receiving such certificate, to countersign the same and return it to the commissioner, who shall keep it on file in his office. It also prohibits any employer from employing or permitting to be employed in any of the occupations prohibited by section 3095, Revised Codes of Montana, 1935, any child without such certificate showing such child to be at least sixteen years of age. The statute provides a penalty for the violation of its provisions. It would appear, therefore, that the age certificate is, in effect, a work permit.

The intent of the legislature that no child shall be employed regardless of age or sex, unless he obtains a certificate from the commissioner showing him to be at least sixteen years of age, is clear and unambiguous. Likewise, it is clear the legislature intended to and did place upon the commissioner the duty and authority to enforce all laws relating to the employment of children. And, further, the Division of Labor, under the statutes has jurisdiction in the enforcement of all laws relating to employment of minors, regardless of age or sex. It is therefore my opinion it is the duty of the Division of Labor to issue age certificates to minors seeking employment, regardless of the age or sex of such minor, and also regardless of the nature of the employment sought.

It may be questioned whether an age certificate is required when the employment sought by the minor is not one of those prohibited by Section 3095, Revised Codes of Montana, 1935. However, it may be noted Section 3098, Revised Codes of Montana, 1935, requires any child to obtain (make application for) such certificate, and specifically provides such certificate must be presented to the employer with whom such child may seek employment. The statute permits the employment of a child in those occupations or employments mentioned in Section 3095, supra, only when such certificate shows such child to be at least sixteen years of age.

2. As to your second question:

Section 3095, Revised Codes of Montana, 1935, provides:

"Any person, company, firm, association or corporation engaged in business in this state, or any agent,

officer, foreman, or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about, any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed air railroad, or passenger or freight elevator, or where any machinery is operated, or for any telegraph, telephone, or messenger company . . . , shall be guilty of a misdemeanor and punishable as hereinafter provided." (Emphasis mine.)

This is a penal statute and prohibits the employment of any child under the age of sixteen years, in, on, or about the enumerated premises, or for the enumerated industries. The language used is plain and unambiguous and needs no interpretation. It is therefore my opinion no child under the age of sixteen years may be employed at any of the occupations, or within any of the industries specifically mentioned in Section 3095, above.

3. As to your third question:

The only prohibition in our statutes against the employment of children is contained in Section 3095, supra, and Chapter 114, Laws of 1941, the latter prohibiting the employment of any person under the age of twenty-one years as a bartender, waiter, or waitress, whose duty is to serve customers purchasing liquor, beer or wines at retail. It is only by virtue of a specific law that minors or children are prohibited from working in certain industries. Unless, therefore, the law specifically prohibits a child or minor from working at certain occupations, such child or minor may be employed therein. However, the law (Section 3098) specifically requires all children attaining the age of sixteen years, to obtain the age certificate before being employed at any occupation. It is therefore my opinion it is permissible for any child, male or female, who has obtained an age certificate from the commissioner of labor showing him or her to be of the age of sixteen years or older, to be employed in any occupation or industry, regardless of the nature thereof, except

as prohibited by Section 3095, Revised Codes of Montana, 1935, and Chapter 114, Laws of 1941, within the maximum hours of labor provided by law.

4. Your fourth question presents a fact case—whether a minor under the age of sixteen years may be employed as a general chore boy and cook's assistant by a private individual operating a boarding house for a mining concern, the boarding house being on the mine property close to actual operations.

The purpose of child labor laws which prohibit employment of minors in certain industries is to protect such minor from injury and to guard their health and morals. Generally, courts have held a restaurant or cook house where meals are prepared and served is not such an industry or occupation as comes within statutes prohibiting employment in dangerous or unhealthful occupations, nor does such industry come within the term manufacturing establishment as used in some statutes. However, these decisions are based wholly upon the wording of the particular statute. It will be noted our statute prohibits the employment of a minor under the age of sixteen years, "in, on, or about any mine." Under the facts given the employment would be "in" and "about" a mine, and therefore comes directly within the prohibition of the statute. The language of this statute is clear and expresses the intention of the legislature to safeguard the child in prohibiting his employment in a mine, or at any place on or about the mine. In considering the provisions of this statute in the case of *Burk v. Montana Power Company*, 79 Mont. 52, 255 Pac. 337, our Supreme Court said:

"Evidently the legislature considered the question of the employment of children under sixteen years of age in certain occupations as an injury to the public, and therefore denounced it as a misdemeanor and punishable as such, although injury might not result to any particular individual..." (Emphasis mine.)

It is therefore my opinion a child under the age of sixteen years may not be employed as a general chore boy or cook's assistant or in any other occupation if the place of work is situated in, on, or about mines.

5. The above answer to question 4 would likewise apply to question 5.

Section 3095, Revised Codes of Montana, 1935, prohibits the employment of a minor under the age of sixteen years "in, on, or about any . . . steam, electric, hydraulic or compressed air railroad." Therefore, if the place of work is situated, or the duties to be performed require the minor to be "in, on, or about" such railroad, such employment is prohibited. It is therefore my opinion no minor under the age of sixteen years, may be employed to perform any service or labor for any railroad, if the duties of such minor require he be in, on or about the railroad premises. Each particular employment, however, must be considered separately in the light of the statutory provisions.

6. The answer to your sixth question would require consideration of two things: (1) Is an establishment where cheese and other dairy products are processed a "workshop" or "factory," and (2) is machinery operated therein?

Webster's International Dictionary defines the word "workshop" as "a shop where any manufacturing or handiwork is carried on," and the word "factory" as "a building or collection of buildings, usually with its equipment or plant, appropriated to the manufacture of goods; the place where workmen are employed in fabricating goods, wares or utensils; a manufactory." The Supreme Court of Idaho, in a recent decision wherein it was called upon to determine whether a planing mill was a workshop within the meaning of a city ordinance, in the case of *City of Idaho Falls v. Grimmitt*, 117 Pac. (2nd) 461, 464, said:

"Reference to the dictionaries and lexicons disclose a wide range of definitions for the word 'workshop', varying all the way from a place 'in which no machinery moved or used by any mechanical power is used' (Webster's New International Dic.) to 'a building where machinery is employed in the work of fabrication; a factory or manufacturing establishment.' 71 C. J. p. 1616. But it evidently passes beyond the limits, by any definition, of a 'contractor's workshop' when it gets to be a 'planing mill' and lumber yard, as found by the trial court. The ordinary implication of the word 'workshop,' to the average person, would hardly comprehend a planing mill and va-

rious lathes, drills, saws, motors and other electrically driven machines and appliances used in a manufacturing plant turning out finished lumber products."

It is plain, however, under our statute, children under the age of sixteen years are prohibited from being employed in any place, whether workshop or factory, or other place, "where machinery is operated." Section 3095, supra, makes three classifications of industries or occupations where the prohibition applies, viz., (1) workshop, (2) factory, and (3) where any machinery is operated. Therefore, in determining the question presented by your sixth inquiry, you must ascertain if machinery is operated in the creamery, dairy, or other establishment; and if so, then a child under the age of sixteen years may not be employed.

I am mindful of the situation existing due to the war emergency and man power shortage, and the necessity or desirability of obtaining the services of minors of non-military age, which is below eighteen years. However, the laws relative to the employment of minors of certain ages is very plain and the legislature has not seen fit to liberalize or even modify any thereof, although it was assembled in regular session while the conditions here referred to existed. The legislature evidently considered the sociological results of impressing the youth of this state into such employment referred to. It is the duty of those officials, upon whom the legislature has placed the power and authority to enforce the laws, to enforce such laws as they are written and not as the exigencies of the times may dictate to them they should be enforced.

Summing up, then, it is my opinion:

(1) It is the duty of the Division of Labor to issue age certificates to all minors, regardless of age or sex, who may make application therefor.

(2) The Division of Labor has jurisdiction in the enforcement of all laws relating to the employment of minors, regardless of age or sex.

(3) No child, male or female, under the age of sixteen years, may be employed in any industry or occupation mentioned in Section 3095, Revised Codes of Montana, 1935.

(4) Any child, regardless of age or sex, who has obtained a certificate from

the commissioner of labor showing him or her to be the age of sixteen years or older, may be employed in any occupation or industry, so long as such labor does not violate the statutory hours of labor.

(5) A minor under the age of sixteen years, may not be employed as a chore boy or cook's assistant, or in any other occupation, if the place of work is situated in, on, or about a mine.

(6) A minor, under the age of sixteen years may not be employed by any steam, electric, hydraulic, or compressed air railroad, where the labor of such minor is performed in, on, or about the premises, including shops, depots, tracks, roundhouse, roadbeds, etc.

(7) A minor between the ages of fourteen and sixteen years, or any age under sixteen years, may not be employed in any industry or occupation where machinery is operated.

Sincerely yours,
R. V. BOTTOMLY
Attorney General