

Opinion No. 136

**Children—Labor, Division of—Agriculture, Labor and Industry,
Department of—Age Certificates.**

Held: The division of labor of the Department of Agriculture, Labor and Industry should not issue an age certificate to anyone under the age of sixteen years regardless of the nature of the employment for which such certificate is sought.

November 30th, 1950.

Mr. Robert C. Brown, Chief
Division of Labor
Department of Agriculture, Labor and Industry
Helena, Montana

Dear Mr. Brown:

You have requested my opinion upon a question which you have presented in the following language:

"Section 3095, R.C.M., 1935, enumerates certain occupations at which a minor under the age of 16 years may not be employed but in this section the occupation or work of a pin-setter in a bowling alley is not mentioned and we have on file applications for age certificates for minors as young as 10 years who wish to work as pin-setters during the hours when the schools are not in session. As we do not find in the laws any mention of a minimum age at which minors may be employed in occupations not covered by Section 3095, we have been issuing age certificates to these minors.

"I would like your opinion as to whether or not we are within the law in issuing age certificates to minors of 10 years of age to work as pin-setters in a bowling alley during the hours when school is not in session."

Section 10-201, Revised Codes of Montana, 1947, (formerly Section 3095, Revised Codes of Montana, 1935) provides as follows:

"Employment of children under sixteen years in certain occupations prohibited. 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, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided."

Section 10-204, Revised Codes of Montana, 1947, provides as follows:

"Upon obtaining the age of sixteen years any child may make application to the Commissioner of Labor and Industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer, if such employment be given, must countersign the certificate and return the same to the commissioner of said bureau, who shall keep the same on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by Section 10-201, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than sixteen years of age." (Emphasis supplied.)

The two above quoted provisions were considered in Opinion No. 68, Volume 20, Report and Official Opinions of Attorney General and in such opinion the then Attorney General held that 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 therefore. The following language of the opinion is also pertinent herein.

"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."

I am unable to agree with either the holding in Opinion No. 68, or the statement above quoted. I believe that the age certificates provided for in Section 10-204, are only to be issued to children of the age of sixteen years or older, and further it is my opinion that the purpose which such certificates serve will be defeated if they are issued to children under the age of sixteen.

It should be noted that the portion of Section 10-204, which I have emphasized, states that "upon obtaining the age of sixteen years any child may make application to the Commissioner of Labor and Industry for an age certificate." Thus, it is clear that the Legislative intent was that only children of the age of sixteen or older should be issued age certificates.

As stated before, Section 10-201 enumerates certain industries and occupations wherein it is illegal to employ children under the age of sixteen. The age certificate provided for in Section 10-204, was created for the protection of the employers in such specified industries and occupations. The age certificate is their guaranty that they are not violating the law. They can be absolutely certain that every person they employ is of the age of sixteen years only if they require the employees to procure an age certificate from the Department of Agriculture, Labor and Industry. Thus, it is essential that such certificates only be issued to children of the age of sixteen years or older. If they are issued to children regardless of age the purpose of issuing such certificates is ignored.

In addition to the foregoing reason for not issuing an age certificate to children under the age of sixteen it is also apparent that there is no reason whatsoever to issue such certificates to children under the age of sixteen. In the industries and occupations listed in Section 10-201, it is illegal to employ a child under the age of sixteen even though he did have a certificate. And in other occupations over which the division of labor has no control of the employment of children, there is no reason for procuring a certificate since in such occupations the employment of children under the age of sixteen is not regulated by the laws of the State.

The observations set forth herein should, of course, be reconciled with the provisions of Section 75-2902, Revised Codes of Montana, 1947,

which regulate the employment of children under the age of sixteen while the public schools are in session. Inasmuch as the provisions of such section are not enforced by your department, I did not consider them for the purposes of this opinion.

It is therefore my opinion that the Division of Labor of the Department of Agriculture, Labor and Industry should not issue an age certificate to anyone under the age of sixteen years, regardless of the nature of the employment for which such certificate is sought.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.