

Opinion No. 116

**Constitutional Law—Hours of Labor
—Federal Legislation Superseded—
State Laws.**

Held: Article XVIII, Section 4, of the Constitution of Montana does not apply to projects financed wholly, or in excess of \$10,000.00, by federal funds so far as it is inconsistent to, or expanded by, applicable federal legislation.

September 11, 1952.

Mr. Elmer A. Rude, Commissioner
Department of Labor and Industry
Mitchell Building
Helena, Montana

Dear Mr. Rude:

You have requested that I issue an official opinion on the following:

“Does Article XVIII, Section 4, of the Constitution of Montana apply to projects financed wholly or in part by federal funds?”

The constitutional provision in question states:

“A period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stock raising; provided, however, that the legislative assembly may by law reduce the number of hours constituting a day's work whenever in its opinion a reduction will better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided.”

It is a well recognized principle of constitutional law that the Constitution, and the laws of the United States made in pursuance thereof, are the supreme law of the land. (*Rhode Island vs. Massachusetts*, 12 Pet. 657, 9 L. ed. 1233). This rule embraces all the peoples and all the territory, whether within or without the states, over which the United States could exercise jurisdiction or authority. (*Rassmusen vs. United States*, 197 U. S. 516, 25 S. Ct. 514, 49 L. ed. 862).

Two basic questions, therefore, must be answered: (1) Can the United States exercise jurisdiction or authority over projects financed by federal funds; and, (2) If so, has the federal government exercised jurisdiction or authority over such projects?

It has become an established principle of constitutional law that Congress may provide for the erection of various public works in order to provide for the common defense, control navigation, or for other public purposes. For example see *Tennessee Electric Co. vs. Tennessee Valley Authority*, 21 F. Supp. 947. It has also been held that Congress may prescribe the details for completing the project without violating the tenth amendment to the constitution. *United States vs. Darby Lumber Co.*, 61 S. Ct. 451, 312 U. S. 100, L. ed. 609. Therefore, Congress may exercise jurisdiction or authority over projects financed by federal funds.

Through an act of Congress, 41 U.S.-C.A. Section 35, commonly known as the Walsh-Healy Act, the federal government has occupied this legislative field. The Act provides:

"In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

* * * * *

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week; . . ."

Consequently, the federal act, the supreme law on the subject, supersedes applicable state laws.

It is, therefore, my opinion that Article XVIII, Section 4 of the Constitution of Montana does not apply to pro-

jects financed wholly, or in excess of \$10,000, by federal funds so far as it is inconsistent to, or expanded by, applicable federal legislation.

Very truly yours,
ARNOLD H. OLSEN
Attorney General