

Opinion No. 34

Child Labor—Employment of Minors on Delivery Trucks—Minors

Held: That the term "machinery" as used in Section 10-201, Revised Codes of Montana, 1947, does not include delivery trucks and minors under the age of sixteen years can be employed to assist in the loading and unloading of such trucks.

August 16th, 1951.

Mr. Robert C. Brown
Commissioner of Labor and Industry
Capitol Building
Helena, Montana

Dear Mr. Brown:

You have requested my opinion on the following question:

Can minors under the age of sixteen years be employed to assist in the loading and unloading of delivery trucks or does the term "machinery" as it is used in Section 10-201, Revised Codes of Montana, 1947, include such motor vehicles as delivery trucks?

Section 10-201, Revised Codes of Montana, 1947, (formerly Sec. 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 services, 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." (Emphasis supplied)

I believe your inquiry is answered by the Montana Supreme Court in the case of *Shaw v. Kendall*, 114 Mont. 323, 136 Pac. (2d) 748, decided in 1943. In that case the plaintiff, a minor child of 14 years of age, was employed on a threshing machine, and one of the questions before the court was whether or not the employment of this minor under sixteen years of age came within Section 10-201, supra. The Court held that since the child was not employed in any of the specifically enumerated occupations, the only language of the statute which could have any application to the employment, was "or where any machinery is operated." The Court then held that the employment of the minor child on a threshing machine did not come under this language of the statute and in so holding quoted the language of the Supreme Court in *Thaanum v. Bynum Irrigation District*, 72 Mont. 221, 232 Pac. 528, as follows:

"By the rule of construction known as 'ejusdem generis,' where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The particular words are presumed to describe certain species and the general words to be used for the purpose of including other species of the same genus. The rule is based on the obvious reason that, if the legislature had intended the general words to be used in their unrestricted sense, they would have made no mention of the particular classes. The words "other" or "any other" following an

enumeration of particular classes are therefore to be read as "other such like" and to include only others of like kind or character."

Since delivery trucks and other motor vehicles are not specifically enumerated in Section 10-201, supra, the same reasoning would apply as in the case of Shaw v. Kendall and it is therefore my opinion that the term "machinery" as it is used in Section 10-201, supra, does not include delivery trucks and minors under the age of sixteen can be employed to assist in loading and unloading such trucks.

Very truly yours,
ARNOLD H. OLSEN
Attorney General