

Opinion No. 5.**Coal Mines—Safety Code—Maintenance of Telephones.**

HELD: A telephone required by law to be installed within one hundred (100) feet of the tippie at any coal mine surface must be maintained in such a manner that calls for aid and assistance from men working underground will not go unanswered.

February 6, 1953.

Mr. Robert L. Swanberg, Chairman
Industrial Accident Board
Helena, Montana

Dear Mr. Swanberg:

Your predecessor requested that I issue an official opinion relative to attendance at a telephone installed at the surface of a coal mine in accordance with Section 50-457, R. C. M. 1947, which provides:

“Installation and location of telephones in certain coal mines. A system of party line telephones shall be installed, and kept in working condition by the coal mining company installing same in each coal mine in operation in the state of Montana employing more than fifteen (15) men. Said telephone equipment shall include one (1) telephone on the surface within one hundred (100) feet of the mine tippie, one (1) at the bottom of each hoisting shaft and in drift or slope mines at the first cross entry or parting in operation where men are liable to congregate or be stationed. In addition thereto there shall be one (1) telephone on each side of the mine, if such side is in more than one thousand (1,000) feet from the bottom of the hoisting shaft or in beyond one thousand (1,000) feet past the first cross entries or parting in operation in a drift or slope mine.

“Telephones inside any coal mine may be changed to more convenient locations, other than designated in

this section, if in the opinion of the state coal mine inspector it should make for greater safety for the men employed therein."

Section 50-457, *supra*, is a safety measure and a part of the coal-mining safety code. In *Kallio vs. Northwestern Improvement Co.*, 47 Mont. 314, 324, 132 Pac. 419, our court spoke of this code, as follows:

"No difficulty is met in the ascertainment of the intent with which the Act was passed—the evil sought to be remedied, the good to be attained. Every section speaks the legislative realization of the hazards of coal mining—hazards which may involve not only the loss of valuable lives, but other consequences of grave import to society, and which, in the interest of the employee, the employer and the public, it is imperative to reduce."

Again, speaking of the purpose of safety statutes, in Vol 20, *Opinions of the Attorney General*, Opinion No. 226, page 289, it was held:

"From a reading of Chapter 120, Laws of 1911 . . . it is readily determinable that it was enacted as a regulatory 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 purpose behind the statute is well recognized, and cannot be narrowed by construction. Coal mining is universally recognized as a hazardous industry; and, in view of such, the legislature has provided for a system of telephone communication with a surface outlet at the tippie. It is not enough that a telephone be installed; the telephone must also be maintained in such a manner that calls from men working underground will not go unanswered to the detriment of the employee and the general public. Were the

telephone to be installed and then neglected the Act of the legislature would become useless and of no effect as a safety provision.

It is therefore my opinion that a telephone, required by law to be installed within one hundred (100) feet of the tippie at any coal mine surface, must be maintained in such a manner that calls for aid and assistance from men working underground will not go unanswered.