

1. May a fireman be compelled to serve in excess of eight consecutive hours in any twenty-four hour period for any reason not constituting an emergency.

2. Does supervision of crowds at sporting events constitute an emergency which would require a firemen to be called to duty in excess of his regular eight hours of service.

In answer to your first question, I refer you to Section 4, Article XVIII of the Constitution of the State of Montana wherein it is written:

"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."
(Emphasis Supplied)

This particular constitutional provision is applicable to the work and service performed by firemen and must be adhered to, as Section 29, Article III of the Constitution of the State of Montana dictates that: "The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

Further reference must be made to Sections 11-1931 and 11-1934, R.C.M., 1947, which have adopted the mandate of Section 4, Article XVIII, supra, and require that eight hours constitutes a day's work for firemen. Sections 11-1931 and 11-1934, supra, further require that a fireman may not be required to work longer than eight hours of each consecutive twenty-four hours except in the event of a conflagration or other similar emergency. Section 11-1931 has the same identical language as Section 11-1934, R.C.M., 1947, except that it covers first class cities.

Opinion No. 72

**Firemen —
Constitution—
Hours of Work — Statutes —
Emergency**

HELD: 1. A fireman may not be compelled to serve in excess of eight consecutive hours in any twenty-four hour period on non-emergency duty unless he is compensated by overtime pay.

2. Supervision of crowds at sporting events does not constitute an emergency which would require a fireman to be called to duty in excess of his regular eight hours of service.

April 18, 1956

Mr. R. V. Bottomly
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Bottomly:

This will acknowledge your letter of February 21, 1956, wherein you requested my opinion on the following questions:

Section 11-1934, R.C.M., 1947, is as follows:

"Hours Of Work Of Members Of Paid Fire Departments In Second Class Cities. The city council, city commission, or other governing body in cities of the second class, shall divide all members of the paid fire department into platoons of three shifts. **The members of each shift shall not be required to work or be on duty more than eight (8) hours of each consecutive twenty-four hours, except in the event of a conflagration or other similar emergency** when such members or any of them may be required to serve so long as the necessity therefor exists. Each member shall be entitled to at least one (1) day off duty out of each eight-day period of service without loss of compensation." (Emphasis Supplied)

Thus, in considering both the constitutional provision, Section 4, Article XVIII, supra, and the statutory provisions, Sections 11-1931 and 11-1934, supra, it is clear that eight hours constitutes a work day for firemen and any services of a non-emergency nature performed in excess of the eight hour day must be compensated by overtime pay.

Further, it should be noted that in 26 Reports and Official Opinions of the Attorney General, No. 46, it was held that a police officer may not be compelled to serve in excess of eight consecutive hours in any twenty-four hour period on non-emergency duty unless he is compensated by overtime pay. It was further held therein, that supervision of crowds at basketball games and the direction of traffic thereafter did not constitute an emergency which would require a police officer to be called to duty in excess of his regular eight hours of service. This holding gave recognition to the fact that such sporting events are generally scheduled and advertised far in advance, and give ample time for the police supervisors and authorities to prepare their proper working schedules for the sporting events.

In 26 Reports and Official Opinions of the Attorney General, No. 46, the case of *Rogers v. Tennessee*

Gas & Transmission Co., 202 S.W. (2d) 737, 739, 304 Ky. 863, was cited and shown to hold that:

"An emergency is something which reasonably may not be anticipated."

What was said in 26 Reports and Official Opinions of the Attorney General, No. 46, relative to the hours of work of policemen, and the supervision of crowds in sporting events is most appropos to the instant situation covering firemen.

It is therefore my opinion that a fireman may not be compelled to serve in excess of eight consecutive hours in any twenty-four hour period on non-emergency duty unless he is compensated by overtime pay.

It is further my opinion that supervision of crowds at sporting events does not constitute an emergency which would require a fireman to be called to duty in excess of his regular eight hours of service.

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