

Opinion No. 65

LABOR; Railroads, Safety glass windshield required for track motor cars—LABOR; Railroads, adequacy of canopy on track motor cars—RAILROADS; Equipment; track motor cars must have safety glass windshield—RAILROADS; Equipment; adequacy of canopy on track motor cars—Section 72-668, RCM, 1947

Held: 1. A railroad may not remove the safety glass windshield from a track motor car and substitute therefor a canvas windshield.
2. If the climate is such as to require side curtains or similar protective devices for the complete protection of occupants of track motor cars from inclement weather, track motor cars must be equipped with such devices.

August 3, 1960

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

Dear Mr. Rude:

You have requested my opinion on the following questions:

1. May a railroad remove the safety glass windshield from a track motor car and substitute therefor a canvas windshield?
2. Must a railroad equip its track motor cars with side curtains or similar protective devices to provide weather protection from the side and rear as well as from above?

In answer to your first question, I refer you to Section 72-668 (1), RCM, 1947 (1959 Supp.), which reads as follows:

"Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier **shall** on or before January 1, 1959, equip each of its track motor cars with:

"(1) A windshield of safety glass . . ." (Emphasis added.)

The use of the word "shall" makes compliance with the provisions of the statute mandatory. *Abshire v. School District No. 1*, 124 Mont. 244, 220 Pac. (2d) 1058 (1950).

The Montana Supreme Court has repeatedly stated that, "wherever the language of a statute is plain, simple, direct and unambiguous, it does not require construction. It construes itself." *Great Northern Utilities Co. v. Public Service Commission*, 88 Mont. 180, 206, 293 Pac. 294, 299 (1930); *Cruse v. Fischl*, 55 Mont. 258, 265, 175 Pac. 878, 880 (1918); *Scheffer v. Chicago, M. & St. P. Ry.*, 53 Mont. 302, 163 Pac. 565, 566 (1917). Section 72-668 (1) is clear and unambiguous in its requirement that track motor cars be equipped with a windshield of safety glass. The statute contemplates the use of no other material as a substitute.

It is therefore my opinion that a railroad may not remove the safety glass windshield from a track motor car and substitute therefor a canvas windshield.

In reply to your second question, Section 72-668(2), RCM, 1947 (1959 Supp.), provides:

"Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars with: * * *

(2) Upon request of the foreman, a canopy or top of such construction as to **adequately** protect the occupants thereof from rays of sun, rain, snow, or other inclement weather." (Emphasis added.)

Subparagraph (2) of this statute is not clear as to the requirement of side curtains on track motor cars. Therefore, unlike subparagraph (1), it must be construed. In construing this statute, I am bound to follow the legislative standards of statutory construction as set forth in Section 19-102, RCM, 1947. This section provides:

"Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning of definition."

The words "canopy" and "top", as defined in the standard dictionaries [e.g., *Webster's New International Dictionary* (2d Ed. 1934); *Funk & Wagnall's New Standard Dictionary* (1941); *Century Dictionary* (1934)], do not seem to have acquired, in the approved usage of these terms, a meaning which would necessarily include or exclude the existence of side curtains as a part of a canopy or top.

However, the word "adequate", the adverbial form of which is used in this statute, has acquired a peculiar and appropriate meaning in Montana law. In *Nagle v. City of Billings*, 77 Mont. 205, 250 Pac. 445 (1926), the Montana Supreme Court defined "adequate" as meaning "fully sufficient, equal to what is required, or lawfully and reasonably sufficient." Therefore, it must be presumed that the Montana legislature, in using the word "adequately" in Section 72-668 (2) meant it as a term of art, to be construed in accordance with its legal meaning. By substituting any of the three definitions of the word "adequate" given by the Montana Supreme Court for the word "adequately" in Section 72-668(2), it is clear that the legislature intended that the canopy be so constructed as to **completely** protect the occupants of a track motor car from inclement weather. If an umbrella or roof, of itself, is insufficient to protect the occupants of a track motor car from adverse weather conditions in this state, then the addition of side curtains or some other protective device is required by the statute.

Additional evidence of this legislative intent may be shown from the fact that the bill originally introduced in the 1957 legislature—H.B. 134, 1957 Legislative Session—provided for a "reasonably substantial top" for the protection of occupants of track motor cars from inclement weather. Substitute H.B. 134, 1957 Legislative Session, which was enacted by the legislature and became Section 72-668, substituted the word "adequately", a judicially defined term of art, for the vague and undefined phrase, "reasonably sufficient." Thus it is clear that the legislature intended that the protection required to be given occupants of track motor cars be **fully sufficient** for the purpose of protecting them from inclement weather.

It is therefore my opinion that, if the climate is such as to require side curtains or similar protective devices for the complete protection of occupants of track motor cars from inclement weather, track motor cars must be equipped with such devices.

Very truly yours,
FORREST H. ANDERSON
Attorney General