

Opinion No. 53-5844

November 6, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John A. Garcia State Inspector of Mines 1024 Park Avenue, SW Albuquerque, New Mexico

{*263} Replying to your letter dated November 4, 1953, you state that a certain pumice mine operator hauls the ore a distance of thirty miles to a crushing and screening plant owned by the mine operator. The operator has failed to provide adequate {*264} safety devices on exposed parts of machinery in the crushing and screening plant and you are wondering whether the screening plant is a part of the mine and within your jurisdiction to enforce safety provisions under § 67-2816 of the 1941 Compilation.

This section provides as follows:

"Moving machinery, stairs, and dangerous places -- Guards and rails. -- All flywheels, gears, belts, and all exposed moving machinery parts that are liable to cause injury, or dangerous parts of machinery used in and about a mine shall be appropriately guarded to prevent injuries to attendants or other persons. Stairs, platforms, and dangerous walks in or about the mine shall be provided with rails, fences, and gates."

A mine is defined in 36 Am. Jur. 281, as an underground working for the excavation of minerals, consisting of pits, shafts, levels, tunnels, and also includes open cuts, quarries, etc., by which such substances as beds of clay, iron stone and limestone are extracted. However, a mine under any conceivable definition would not include a screening and crushing plant thirty miles distant. The provisions of § 67-2816 apply to machinery used in and about a mine and since the machinery used in the screening and crushing plant is not used in and about a mine, it is our opinion that you would not have jurisdiction under the above-mentioned section to supervise and require safety devices in the crushing and screening plant.

By: C. C. McCulloh

Assist. Attorney General