

Opinion No. 59-50

May 20, 1959

BY: FRANK B. ZINN, Attorney General

TO: Mr. William H. Hays State Inspector of Mines 1024 Park Avenue Albuquerque, New Mexico

State Inspector of Mines has no authority to reduce safety requirements provided by statute.

OPINION

{*77} In your recent letter you ask the opinion of this office as to the authority of the State Inspector of Mines to authorize the employment of more than ten men on any one shift in any part of a mine where a second way of escape has not been provided from any part of the mine to another part of the mine.

It is my opinion that the State Inspector of Mines does not possess the authority to authorize the employment of more than ten men in any part of a mine if no second way of escape has been provided from that part of the mine to another part of the mine.

Article XVII, Section 2, of the Constitution of New Mexico provides as follows:

"The legislature shall enact laws requiring the proper ventilation of mines, the construction and maintenance of escapement shafts or slopes, and the adoption and use of appliances necessary to protect the health and secure the safety of employees therein. * * *"

Section 63-21-3, N.M.S.A., 1953 Comp., reads as follows:

"Not more than ten (10) men shall be employed in any part of a mine on any one (1) shift until, if practicable, a second way of escape has been provided from that part of the mine to another part of the mine."

I find no statutory law which vests in the State Inspector of Mines the authority to reduce the safety requirements of our statutes. Sections 63-4-1 through 63-4-17, N.M.S.A., 1953 Comp., set forth the law covering the appointment, salary, duties, et cetera, of the State Inspector of Mines and his deputies. Other than in paragraph (c) of Section 63-4-5, N.M.S.A., 1953 Comp., I find no mention of any regulation making authority to be exercised by the State Inspector of Mines.

There are no New Mexico Supreme Court decisions even remotely touching upon the question here at hand.

Comparatively speaking, there is a lack of case law on the subject in our sister states of the union. The case of **Whitaker v. Green River Coal Company, et al.**, Ct. of App., Ky., 122 S.W. 2d 1013, paragraph 4 of syllabus states:

"It is common knowledge that mining is a hazardous industry involving the safety of thousands of miners and the preservation and use of highly valuable property. * * *"

The case of **Merced Dredging Company v. Merced County, et al**, 67 F. Supp 598, paragraph 8 of the syllabus states:

"Police powers of the state are exercised by the legislative branch of government, which thereby determines what measures are appropriate or needful for the protection of the public welfare, and especially the public health, the public safety, and the public morals."

The word "practicable" appearing in the statute with which we are concerned, no doubt has caused you to ask for an interpretation of Section 63-21-3. It is my belief that this single word is not sufficient to grant to your office the authority to vary what appears {*78} to be the plain intent of the statute.

Carl P. Dunifon

Assistant Attorney General