

Opinion No. 63-69

June 21, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: State Inspector of Mines 1024 Park Avenue, S.W. Albuquerque, New Mexico

QUESTION

FACTS

The Kermac Mines have several mines in operation apparently working three shifts. Ore is produced on the first two shifts but on the third or graveyard shift the mine activity is apparently confined to maintenance work. During the first two shifts each mine has its own mine boss. However on the third (graveyard) shift there is only one foreman in charge of all the mines in operation. This one foreman is in contact with the several mines in operation during the graveyard shift at all times by means of a two-way radio.

QUESTION

Does this mine operation as described above, comply with Section 63-20-2, N.M.S.A., 1963 Compilation, which provides that "The mine operator shall at all times during the operation of the mine have a person on the ground with authority over all branches and phases of the operation of the mine during the time he is on duty." . . . ?

CONCLUSION

No. There must be a person of authority in charge at **each** mine, at all times during any phase or branch of the mine operation.

OPINION

{*145} ANALYSIS

In 1933 under Chapter 153 of the Session Laws, the Eleventh New Mexico Legislature enacted a series of mining regulation laws providing "for the health and safety of persons employed in and about mines. . . ." as was expressed in the title of the Act. There were 308 laws passed and they have been compiled in replacement Volume 9, N.M.S.A., 1953 Compilation, and include Sections 63-3-1 to 63-29-2. The law in question, Section 63-20-2 concerns the duties pertaining to the operation of mines, other than coal. However, there is another identical section (63-6-2) which deals expressly with coal mining operations. Both of these laws were, of course, included in the Act of 1933, relating expressly to health and safety in mines. Since both statutes are identical, the ruling as announced in this opinion shall apply to **all mining** operations throughout the state unless specifically contravened by another statute.

The statutory provision in issue is set out as follows in its entirety:

"63-20-2. Presence of official with complete authority required. -- The mine operator shall at all times during the operation of the mine have a person on the ground with authority over all branches and phases of the operation of the mine during the time he is on duty. Provided, however, that nothing herein contained {*146} shall prevent the owner or operator from personally having such charge of the mine, Provided he can qualify under all other provisions of this act."

The statute above is clear and unambiguous, and it must be read and given effect as it is written by the Legislature. **Burch v. Foy**, 62 N.M 219, 223; 308 P. 2d 199 (1957).

Section 63-20-2 clearly and in no uncertain terms expressly directs the operator to place a person, (or himself) "on the ground" and "at all times" while a mine is in operation, "with authority over all the branches and phases of the operation of the mine." The statutory phrase "on the ground" when used for reference to the actual location of a place, (as in this instance) is synonymous with the phrase "on the premises" and the meaning of the phrase "depends upon its use and the subject matter to which it refers." **Treasure Island Catering Co. v. State Board of Equalization**, 19 Cal. 2d 181; 120 P. 2d 1, 3, 19, (1941). For another example and application of the rule cited above see **Brindze v. Atlantic City Policemen's Beneficial Assn.** 72 A. 435, 437; 75 N.J. Eq. 405 (1909). The word "ground" most frequently means earth surface, however "it also means the lower surface in the space to which the word relates." **Wood v. Carter** 70 Ill. App. 217, 219 (1897); **38 C.J.S.**, 1085.

And in this instance the legislature in using the phrase "on the ground" was obviously referring to the interior of the mine on and below the earth's surface. Therefore the person in charge must be at the mine at all times during its operation in order to comply with the law.

As is readily observed, the Kermac Mine operation fails to comply with the statute. One foreman cannot, under the law, by radio control, supervise the operation of several mines. There must be a person in charge at each mine operating at night as well as the daytime. The fact that the mines do not produce ore during the graveyard shift is immaterial since the law deals expressly with "all branches and phases of mine operation."

It is apparently argued that the mine operators are substantially complying with Section 63-20-2, supra, because the night foreman is in "constant contact" with the various mines in operation by a two-way radio. We are in no position to decide the question since more facts are required before an answer can be given. However, even if substantial compliance were shown, it would not be sufficient under the law. Sections 63-20-2 was one of the many laws enacted in 1933 to promote the safety of mine workers and which in turn would further the efficiency of mining operations. "Mining has long been recognized in the United States as an occupation inherently dangerous to the health and safety of its workers." **Volume 3, American Law of Mining**, page 713. And

this law was designed as a precaution against accidents and injuries by requiring a person to be present in the mine at all times having complete authority over any phase of the mining operation. The "duty" of the mine operator to comply with the provision of a law of this nature "is absolute and cannot be satisfied by a mere approximation, or by the exercise of reasonable diligence or ordinary care in an effort to comply." **Lively v. American Zinc Co.**, 137 Tenn. 261, 266; 191 S.W. 975; **Volume 3, American Law of Mining**, page 730.

{*147} Apparently the Kermac Mine operators, consider it undesirable from an economic standpoint to employ a night boss for each mine in operation during the night shift when no ore is produced and that, in certain instances at least the chance of accident or injury during that period is minimized.

We cannot consider this argument in our interpretation of the law. When a statute is clear and unambiguous, there is no room for construction. It must be read and given effect as it is written by the Legislature, not as we may think it should be or would have been written if the Legislature had envisaged all problems and complications which might arise in the course of its administration. **Burch v. Foy**, supra.

By: George R. Schmitt

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