

Opinion No. 43-4399

October 27, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Robert J. Doughtie, State Labor Commissioner, Santa Fe, New Mexico

I have your letter of October 26, 1943, wherein you request an official opinion of this office concerning a matter now confronting you. You state that there is a plan whereby the Nevada Consolidated Copper Company intends to have prisoners of war assigned to work in the copper mines at Hurley, New Mexico. You further state that the regular workers at this property are very much disturbed over the possibility of having to work side by side with enemies of this country. You anticipate that such a situation will result in labor troubles if it is allowed to occur.

You also raise the question concerning the advisability of allowing foreign soldiers who are now prisoners of war to work in a vital industry, such as a copper mine, where the danger and consequences of sabotage would be very great.

While I appreciate the practical difficulties connected with this problem, I can only say in connection therewith that these are matters that this office has no jurisdiction concerning their determination. I do, however, call your attention to the terms of the so-called Geneva Conference, which was signed at Geneva, Switzerland July 27, 1929, the ratification of which was advised by the Senate of the United States on January 7, 1932, and was ratified by the President of the United States on January 16, 1932. The ratification of the United States of America was duly deposited with the Government of Switzerland on February 24, 1932, and proclaimed on August 4, 1932 by the President of the United States of America. (See United States Statutes at Large, Vol. 47, Part 2, Page 2021.)

I specifically call your attention to the provision of Chapter 3, Article 31, of the Geneva Convention, which provides:

"Labor furnished by prisoners of war shall have no direct relation with war operations. It is specifically prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units."

Whether or not the mining of copper has a sufficiently direct relation with war operations, or whether or not transporting copper ore in the mine is transporting material intended for combatant units, is a question of international law which should be ruled upon by the International Red Cross and the War Department before any action is taken.

I also call your attention to Article 32 of this convention, which provides:

"It is forbidden to use prisoners of war at unhealthful or dangerous work."

Mining is commonly considered at least semi-dangerous work. Whether or not allowing men to work in a mine, mill, or smelter would violate this provision of the pact raises a question that should most certainly be ruled upon by the International Red Cross and the War Department.

I further point out that Article 34 provides for agreements as to certain types of work concerning wages between the belligerents. I have not been advised that any such agreements have been entered into with any of the belligerents in this war, or that there are any pending negotiations looking toward such agreements which would justify the paying of wages during such interim, according to the further provisions of Article 4.

It is therefore my opinion, in view of the above discussion, that a serious question of international law is raised by this proposal, and that no action should be taken at this time which would place prisoners of war at work in a copper mine, mill or smelter until these various questions have been passed upon by the proper international organizations and our War Department.

Hoping that the above is of some help to you, I remain

By HARRY L. BIGBEE,

Assistant Attorney General