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July 6, 1961
Opinion No. 61-48

REQUESTED BY: Mr. Roy V. Hersey
State Mine Inspector

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Does the State Mine Inspector have juris-
diction over mills and smelters?

CONCLUSION: No.

In a prior letter dated June 16, 1958, the Attorney General had advised the Mine Inspector that the definition of mines under A.R.S. §27-301, and hazardous occupation under A.R.S. §23-282 was sufficiently broad to give the Mine Inspector jurisdiction over Mills operated in connection with the mines.

We have considered this informal letter opinion, and it is with considerable reluctance that we feel called upon to limit severely the scope of the letter and insofar as it conflicts with this Opinion, overrule it. Since it is our duty to consider and to support prior Opinions of Predecessor Attorneys General, we do not, except in a very clear case, overrule or limit the same. However desirable it may be that there be some regulation of Mills and Smelters, we cannot find such jurisdiction vested in the office of the State Mine Inspector.

The powers and duties of the State Mine Inspector are set forth in the following sections of Arizona Revised Statutes:

"§27-121. Qualifications of mine inspector;
duties; deputies; salary

* * *

C. The inspector, and each deputy shall devote his entire time to the duties of his office."

* * *

"§27-124. Mine inspections required; powers
of inspector

A. The mine inspector shall visit, at least once every three months, every mine in the state employing fifty or more men underground, and at least once each year, every other mine employing six or more men. He shall inspect and examine into the operation, conditions, safety appliances, machinery, sanitation and ventilation, the means of ingress and egress, the means taken to protect the lives, health and safety of the miners, the cause of accidents and deaths occurring in the mine, and the means taken to comply with the provisions of this title.

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B. The inspector may at all hours enter and examine any part of any mine, visit, investigate, and examine a plant or equipment connected therewith, or any part of the workings thereof."

"§27-307. Notice to mine operator of dangerous condition in mine; compliance; failure to comply as prima facie evidence of negligence; order to cease operations

A. If upon inspection it appears to the state mine inspector that a mine from any cause is in a dangerous condition or its condition fails to comply with the requirements of law, the inspector shall at once serve written notice on the operator or his agent in charge, stating in detail why the mine is dangerous or does not comply with law, and specifying necessary changes to be made and setting a reasonable time within which to make them.

* * *

C. If it appears to the inspector from a reexamination that the changes or compliances have not been made within the time specified in the notice, and that the mine is still in a condition dangerous to life or health, and in the opinion of the inspector it is necessary for the safety of the life or health of employees that the mine be closed, he shall forthwith order cessation of operation of the mine or part thereof, * * *"

A mine is defined in §27-301, Arizona Revised Statutes as follows:

"§27-301. Definitions

* * *

3. 'Mine' means all mines in the state, and includes all parts of a mine and any mining plant or equipment connected therewith, underground or on the surface, which contributes or may contribute to the mining or handling of ore, coal, or other metalliferous or non-metalliferous mineral product.

* * *"

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If a mill and smelter are to come within the purview of the foregoing provisions, then they must come within the description "Any mining plant or equipment connected (with the mine, and) * * * which contributes * * * to the mining or handling of ore. * * *"

It can be logically argued that a mill or smelter may be connected with a mine in an economic sense. A mill or smelter does not, however, contribute to the mining or handling of ore within the meaning of Section 27-301, Arizona Revised Statutes.

Mining is the process of extracting from the earth rough ore. Milling or smelting is the process of extracting from this rough ore the particular natural product desired. In re: Rollins Gold and Silver Mining Company, 102 F. 982. Smelting is not a part of the mining process. United States v. United Verde Etc. Co., 8 Ariz. 186, 71 Pac. 954.

Mining is the actual cutting and hewing of mineral in a mine and its removal to the surface. State v. Birmingham Rail & Locomotive Co., 66 So.2, 884. Originally, the term "mining" conveyed the idea of extracting minerals from beneath the surface of the earth by means of tunnelling and shafting, but now it is not confined in its meaning to the method of excavation, although it is limited in its meaning to the extraction of minerals from the earth. Lillington Stone v. Maxwell, 165 SE 351, 203 N.C. 151.

It is well settled in this jurisdiction that the meaning of the statute should be determined by looking at the entire chapter in which it is contained. Hunt v. Callaghan, 257 Pac. 648, 32 Ariz. 235. Title 27, Chapter 3, entitled, "Operation of Mines" contains more than thirty statutes dealing specifically with the extraction of ore from the earth. There is not a single statute in this chapter specifically applicable to the operation of a mill or smelter.

A former informal pronouncement by this office attempted to justify an assumption of jurisdiction by the State Mine Inspector over mills and smelters with §23-282, Arizona Revised Statutes, which deals with the hours of work in various industries, including mines, mills and smelters. It is our opinion that this statute does not in any way extend the jurisdiction of the State Mine Inspector.

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When the ore is sent to the mill the mining process ceases
as does the jurisdiction of the State Mine Inspector.

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