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STATE CAPITOL  
PHOENIX, ARIZONA

August 20, 1973

DEPARTMENT OF LAW OPINION NO. 73-17 (R-59)

REQUESTED BY: THE HONORABLE WILLIAM L. SWINK  
Arizona State Senator

- QUESTIONS:
1. Under A.R.S. § 23-282.C.1 what constitutes an emergency where life or property is in imminent danger?
  2. Would the loss of revenue arising from the halting of production be cause for requiring employees to work longer than the prescribed number of hours?
  3. Who may make the determinations necessary under subsection C.1?

- ANSWERS:
1. See body of opinion.
  2. No.
  3. See body of opinion.

All three of the questions presented herein relate to A.R.S. § 23-282, which is quoted below in its entirety:

A. Employment in underground mines, underground workings, open cut workings, open pit workings, in or about, and in connection with, the operation of smelters, reduction works, stamp mills, concentrating mills, chlorination processes, cyanide processes, cement works, rolling mills, rod mills, coke ovens, blast furnaces, is declared injurious to health and dangerous to life and limb of those employed therein.

B. The period of employment for all persons employed or engaged in work or labor of any kind in underground mines or underground workings of any kind, in open cut workings or open pit workings, or in or about or in connection with the operation of smelters, reduction works, stamp mills, concentrating mills,

chlorinating processes, cyanide processes, cement works, rolling mills, rod mills, coke ovens and blast furnaces, shall not exceed eight hours within any twenty-four hour period and the eight hours shall include the time used in descending to and ascending from the point or place of work in an underground mine or underground workings, or the time used in leaving the surface of a tunnel, open cut, or open pit workings, for the point or place of work therein, and in returning thereto from the point or place of work.

C. The period of employment prescribed in subsection B may be deviated from in the following instances:

1. In an emergency, where life or property is in imminent danger, the period of labor prescribed in subsection B may be prolonged during the continuance of the emergency.

2. The hours of employment may be changed from one part of the day to another at stated periods, the change not to occur more than once in any two weeks, and the employment may be for more than eight hours during the day in which the change is made.

D. Any person violating any provision of this section, and any person who, as foreman, manager, superintendent, director, or officer of a corporation, or as employer or superior officer of any person, commands, persuades, or allows any person to violate any provision of this section is guilty of a misdemeanor punishable by a fine of not less than two hundred and fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than three nor more than six months. Upon a trial for a violation of this section, the jury, if the defendant is found guilty by a jury, shall decide whether the punishment shall be a fine or imprisonment, or both fine and imprisonment.

E. Each day this section is violated constitutes a separate offense. (Emphasis added.)

The above quoted statute prescribes the maximum number of hours of employment in connection with mine and smelter operations. Of primary importance is protection of the health of affected employees. In order to further this ideal, A.R.S. § 23-282.B provides that the period of employment described therein ". . . shall not exceed eight hours within any twenty-four hour period."

Two exceptions to this eight hour limitation are provided by A.R.S. § 23-282.C; this opinion is addressed to the first of the two exceptions.

1. The first question with regard to the first exception is: "What constitutes an 'emergency' where life or property is in imminent danger?"

In Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946) Arizona's Supreme Court defined "emergency" as follows:

\* \* \* The word "emergency" has a well understood meaning. It is defined and understood as: "An unforeseen combination of circumstances which calls for immediate action." Webster's New Int. Dict., 2d ed. Judges and law writers have repeatedly defined the meaning of the word "emergency" when used in statutes. These definitions are aptly summarized in Black's Law Dict., 3d Ed., 654:

"A sudden unexpected happening; an unforeseen occurrence or condition; specifically, a perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity.

"A relatively permanent condition of insufficiency of service or facilities resulting in social disturbance or distress."

In order to fall within the exception defined by A.R.S. § 23-282.C.1, there must not only be an "emergency" as defined above, but there must also exist an "imminent danger to life or property."

"Imminent danger" is defined in Black's Law Dictionary, 4th Ed., 885, as ". . . such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense."

Accordingly, it is our opinion that a situation falls within the exception defined in A.R.S. § 23-282.C.1 if (1) it is unforeseen and unexpected and (2) it is so threatening as to place a reasonable and prudent man to the instant defense of either life or property.

2. The second question presents the problem of applying a specific factual situation to the statutory exception. It has been stated, with regard to statutes regulating maximum hours of labor that, although the words will be interpreted as ordinarily used, an exception or exemption should be strictly construed. People ex rel. S. J. Groves & Sons Co. v. Hamilton, 238 N.Y.S. 81, 227 App.Div. 356, affirmed 254 N.Y. 540, 173 N.E. 856 (1930); Le Blanc v. Southern Bell Tel. & Tel. Co., 333 F.Supp. 602 (E.D. La. 1971), affirmed 460 F.2d 1228 (5th Cir. 1972).

In our opinion, strict construction of A.R.S. § 23-282.C.1 leads to the conclusion that a loss of revenue arising from the halting of production would not in and of itself justify a deviation from the eight hour limitation prescribed in A.R.S. § 23-282.B. Although a production halt arguably could be an unforeseen event necessitating immediate action (i.e., an emergency), a production halt in and of itself would not place life or property in imminent danger.

3. The third question is concerned with the responsibility for making the necessary determinations under A.R.S. § 23-282.C.1. Since we have determined hereinabove that the exception to the eight hour limitation only applies when an "instant defense" is necessary to protect life or property, the person(s) exercising immediate responsibility over the affected employees must make the required determination.

In 1962 the Attorney General rendered a determination with regard to the exception to the eight hour limitation for state employees, the relevant portion of which states:

Eight hours, and no more, shall constitute a lawful day's work for any person doing manual labor . . . except in an extraordinary emergency. . . . (Emphasis added.) A.R.S. § 23-391.

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With respect to the exception set forth in the emphasized language above, and in light of Garvey, supra, Attorney General Opinion No. 62-98-L states the following:

In essence, the court is saying that "emergency" means a combination of circumstances calling for immediate action in the interest of the public health, safety or welfare.

It is, therefore, our opinion that the determination as to whether an emergency exists within the contemplation of the above definition is an ad hoc determination to be made with reference to a particular factual situation by the person with immediate responsibility. (Emphasis added.)

Consistent with the reasoning of the Attorney General, and in the absence of either a statute or appellate court decision to the contrary, it is our opinion that the person with immediate responsibility over the particular employee(s) must make the required determination.

Respectfully submitted,



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The Attorney General

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