

✓  
Mw  
May 7, 1951  
Op. No. 51-129

5/10/51  
Mr. Wilson T. Wright  
Chairman, Arizona Corporation  
Commission  
Capitol Annex  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Sir:

We have your letter of April 30, 1951, enclosing copy of letter from the Brotherhood of Locomotive Firemen and Enginemen at Ajo, requesting our opinion as to the legality of the operation of a switch engine of the Phelps Dodge Corporation with only one man in the cab.

Inspector I.P. McBride of your office has advised us the facts are substantially as follows: The Tucson, Cornelia and Gila Bend R.R. Co. is a common carrier by railroad and its tracks terminate at the mine at Ajo. The mine is owned and operated by the Phelps Dodge Corporation and in connection therewith it owns and operates an industrial rail line branching out from the line of the T.C. & G.B. railroad tracks, such industrial line being less than forty miles long. The yard trackage at Ajo is owned and operated by the T.C. & G.B. Co. The switch engine in question is owned by the Phelps Dodge Corporation and all switch enginemen are employed by the Phelps Dodge Corporation.

We further understand from Mr. McBride that this switch engine is used and operated by the Phelps Dodge Corporation on its industrial tracks and also at times, under some agreement with the T.C. & G.B. Co. (such agreement not being specifically identified), operates in the yard and over the tracks owned by the last mentioned railroad company and at times handles switching of cars for the railroad company.

51-129

Mr. Wilson T. Wright  
Chairman, Arizona Corporation  
Commission

May 7, 1951  
Page Two

We refer you to our opinion of December 16, 1949, given to Mr. McBride, Safety Inspector of your office. This last mentioned opinion was concerning operations of the Apache Railway over the tracks of the Southwest Lumber Company between Maverick and McNary. In that case there was substantially a lease agreement between the Southwest Lumber Company and the Apache Railway, and the railway company owned the equipment and employed the crews which operated over the tracks of the Southwest Lumber Company. For such and other reasons we held that the operations over the tracks of the Southwest Lumber Company between Maverick and McNary were not the operations of an "industrial" railroad, but were the operations of a regular carrier engaged generally in the railroad business. We affirm that opinion.

However, your present case is quite different. The common carrier railroad, T.C. & G.B. Co., does not own the equipment and does not employ the crew operating the same. The equipment is owned by the Phelps Dodge Corporation and the crew is employed by it. The Phelps Dodge is not a common carrier railroad. Its tracks and lines are solely of an industrial character. We think it must be conceded from our statutes that a true industrial rail line is not within the provisions of the "Full Crew Act", particularly when such line is less than forty miles long. Section 69-123 ACA 1939. It has been held by substantial authority that an industrial rail line is not a "railroad company" within the meaning of statutes generally establishing regulations as to railroad companies.

Arnold Lumber Co. vs. Carter (Fla.)  
108 So. 815, 46 A.L.R. 1068

Section 69-121 ACA 1939 provides for train crews to be used by railroads and if such section is applicable, the switch engine in question would have to be manned with two enginemen. However, we do not believe it to be applicable to this particular operation. The penalty for violation of the provisions of Section 69-121 is provided in Section 69-122 ACA 1939, which reads as follows:

"Penalty for violation of Full Crew Act.-- That from and after the taking effect of this act, it shall be unlawful for any railroad company, or

Mr. Wilson T. Wright  
Chairman, Arizona Corporation  
Commission

May 7, 1951  
Page Three

for the receiver of any such company, to run upon or over any line of railroad, or any part thereof, within the state of Arizona, any train, locomotive, or engine, which is not equipped with, or does not carry for use in its operation, a full crew as herein fixed and prescribed; and each and every railroad company or receiver that, after the taking effect of this act, shall run upon or over any line of railroad or any part thereof, within the state of Arizona, any train, locomotive, or engine, which is not equipped with, or does not carry, for use in its operation a full crew as herein fixed and prescribed, shall be liable to the state of Arizona for a penalty of not less than one hundred dollars (\$100.00) for every such offense. All suits for penalties under this act shall be brought and prosecuted to judgment in the name of the state of Arizona, as plaintiff, in a court of competent jurisdiction in the county of Maricopa, or in any county in said state into or through which the defendant's line of railroad may be operated; and such suits shall be brought and prosecuted by the attorney-general, or under his direction, or by the county attorney of such county."

You will note the only penalty is against the "railroad company" or the receiver of such company, which evidently means a company principally engaged in operating a railroad.

Section 69-207 ACA 1939 provides as follows:

"Industrial railroad not a common carrier.-- Any industrial railroad, owned and operated in connection with and as a part of the operating equipment of an industry in this state, and which is not incorporated

Mr. Wilson T. Wright  
Chairman, Arizona Corporation  
Commission

May 7, 1951  
Page Four

as, nor held out to be a common carrier, and which does not come into competition with a common carrier railroad, shall have the right to transport the property of others, either free or under private agreement for compensation, and such railroad shall not by reason thereof be held or construed to be a common carrier."

There are no facts presented that the Phelps Dodge Corporation, in operating its industrial railroad, competes with any common carrier nor that it is engaging generally in the railroad business. The most that can be said from the facts presented to us is that the Phelps Dodge Corporation, incidental to its industrial pursuits, owns and operates a switch engine which incidentally and at times runs over the lines of the T.C. & G.B. R.R. Co., and under some agreement occasionally handles business for the last mentioned railroad company. Section 69-207, supra, provides that an industrial railroad "shall have the right to transport the property of others, either free or under private agreement for compensation, and such railroad shall not by reason thereof be held or construed to be a common carrier."

In summary, it is our opinion from the facts presented to us that Phelps Dodge Corporation is staying within its province as an industrial railroad in the operation of this switch engine and is not subject to the provisions of the "Full Crew Act".

By this opinion we do not wish to infer that just because the Phelps Dodge Corporation owns and mans the switch engine, the T.C. & G.B. R.R. Co. is under all circumstances absolved from compliance with the "Full Crew Act", concerning the operation of the engine. There could be facts such

Mr. Wilson T. Wright  
Chairman, Arizona Corporation  
Commission

May 7, 1951  
Page Five

as the relation of principal and agent between the corporations, subterfuge for the purpose of evading the act, etc., which may cause us to form a different opinion. Such facts are not now before us.

Very truly yours,

FRED O. WILSON  
Attorney General

ALEXANDER B. BAKER  
Assistant Attorney General

ABB:rc

51-129