

March 16, 1948

Mr. Clifford J. Murdock  
State Mine Inspector  
Capitol Building  
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Murdock:

We have examined Chapter 65, Article 2 of Arizona Code Annotated 1939, with reference to the authority of the State Mine Inspector to adopt rules and regulations governing the operation of mines in Arizona.

We find that the Legislature did not, when enacting this law, specifically give the Mine Inspector such power.

It therefore becomes proper to determine from an examination of this article, whether such authority was granted indirectly and as a necessary part of his general authority, in order that he might perform the duties imposed upon him by the statute.

In reading this Act we find that Section 65-204 states in part:

"Inspection of mines - Powers of inspector.  
The mine inspector shall visit, at least once every three (3) months, every mine in this state employing fifty (50) or more men underground, and every other working mine employing six (6) or more men, at least once every year, and shall inspect and examine into the operation, conditions, safety appliances, machinery, sanitation and ventilation therein, the means of ingress and egress, and the means taken to protect the lives, health and safety of the miners, the cause of accidents and deaths therein, and inspect and ascertain the means taken to comply with this chapter (article)".

Section 64-206 reads in part as follows:

"Notice of dangerous condition-Operators to comply with requirements - Mine to be closed upon failure.- If upon inspection it shall appear to the mine inspector that a mine is, from any cause, in a dangerous condition or fails to comply with the requirements of law, he shall at once serve

written notice on the operator or his agent in charge, stating in detail why said mine is dangerous, insecure, or not in compliance with the law, and what necessary changes should be made, and specify a reasonable time within which to make the same".

This general subject is covered in 11 Am. Jur (Const. Law), page 955, section 240, where the following statement is found:

"The authority to make rules and regulations to carry out an express legislative purpose or to effect the operation and enforcement of a law is not an exclusively legislative power, but is rather administrative in its nature. The legislature may not, however, delegate to administrative officers the determination of what the law shall be or what acts are necessary to effectuate the law".

In the case of U. S. v. Calistan Packers, 4 Fed. Supp. 660, the court said:

"It may readily be answered that where Congress has laid down fairly definite standards, the courts have consistently held that the procedure thereunder, even to the extent of providing rules and regulations, violations of which may be punished, may be placed in the hands of the administrative agencies of the government. This power of delegation is highly essential to the efficacy of such statutes".

This question has not been passed upon directly by the Arizona Supreme Court, however, the general principle was stated in Haddad v. State, 23 Ariz. 105, where at page 122 the court said:

"We think that the control committed by chapter 130 to the Corporation Commission over the common carriers mentioned in the act, and the public highways of the state, is in no wise repugnant to the letter or spirit of section 12. (Constitution)

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State Mine Inspector

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"When the validity of any rule, regulation, or order of the commission made under chapter 130 is in question, the criteria to be applied are the reasonableness of the regulation, in itself, and whether it really effectuates any purpose for which the powers were conferred; the presumption being that the regulation is reasonable and valid".

The principle involved is well-stated as follows:

"The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. Field v. Clark, 143 U.S. 649, 694, 12 S. Ct. 495, 505, 36 L. Ed. 294; United States v. Grimaud, 220 U.S. 506, 31 S. Ct. 480, 55 L. Ed. 563".

State v. Stark (Mont.) 52 Pac. (2d) 890.

It is therefore our opinion that the Mine Inspector does have authority to adopt rules and regulations to effectuate the powers granted him by the Legislature which are reasonably calculated to aid in the enforcement of the provisions of the mining laws.

Very truly yours,

EVO DeCONCINI,  
Attorney General

PERRY M. LING  
Chief Assistant  
Attorney General

PML:bls

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