

January 14, 1949

**LAW LIBRARY  
ARIZONA ATTORNEY GENERAL**

Mr. J. N. Brennen  
Manager  
State Labor Department  
39 West Adams  
Phoenix, Arizona

Dear Sir:

This is in reference to your letter of January 11, 1949, requesting an opinion as to the circumstances surrounding the voting of certain Roundhouse Employees of the Southern Pacific Railroad Company, Machinists' Local #1348, at the last November 2nd election.

Section 55-514 of the Arizona Code Annotated 1939, entitled "Employee to be given time to vote - Penalty on Employer" is correctly quoted.

That section is likewise correctly quoted in the opinion of the Attorney General addressed to Mr. J. A. Peters, Master Mechanic of the Southern Pacific Company, Tucson, Arizona, of October 31, 1946, a correct copy of which opinion is attached to your letter. That opinion of the Attorney General is reaffirmed in every respect.

The following is a copy of the notice which was given on October 26, 1948, by the Company to prospective voters and entitled "Special Notice #19", signed by H. E. Carter, a copy of which is attached to your letter.

"Post Tucson, Phoenix, Yuma, Gila,  
Globe, Hayden Junction, San Simon,  
Benson

Motive Power & Car Department  
Employees

There will be a National General

Election on Tuesday, the second day of November, 1948. An employee who is a registered voter, qualified to vote at this election, may have up to two hours for the purpose of voting provided that he makes advance arrangements personally with his immediate foreman, specifying the hours during which he desires to be absent for the purpose of voting will not be paid for the time of his absence."

The notice seems to be in proper form except for the last sentence which reads as follows:

"An employee who is absent from work for the purpose of voting will not be paid for the time of his absence." (Underscoring supplied.)

This is a direct violation of the provisions of Section 55-514 above referred to which reads as follows:

" . . . ; and such voter shall not, because of so absenting, be liable to any penalty, nor shall any deduction be made therefor from his usual salary or wages; . . . ;" (Underscoring supplied.)

This seems to be a flagrant attempt to improperly dissuade the voters who work for the company from voting or to otherwise improperly influence their attendance at the polls which is the direct opposite of the purpose of the statute and the evil intended to be corrected thereby. Particularly is this action described in your letter distasteful and a flagrant violation of law in view of the fact that the opinion of the Attorney General of October 31, 1946, had been specifically directed to this provision in the law. Those taking part in this violation have, without a doubt, subjected themselves to the penalty provision of the law and are guilty of a misdemeanor. This provision reads as follows:

" \* \* \* Any person who shall re-

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fuse to an employee the privilege hereby conferred, or who shall subject an employee to a penalty or reduction of wages therefor, or who shall, directly or indirectly, violate the provisions of this section, shall be guilty of a misdemeanor."

The practice indicated by the notice heretofore quoted from is one which we are sure the Southern Pacific Company itself would in nowise countenance should it be brought to the attention of the proper officials. It is, therefore, suggested that this matter be called to the attention of the county attorney of the proper county and that the full requirements of the law be brought to bear upon the matter.

As an alternative to the foregoing, it is further suggested that the employees who have been injured employ counsel and bring civil suit for the collection of wages due.

Yours truly,

FRED O. WILSON  
Attorney General

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