

March 1, 1949

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

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

Dear Mr. Murdock:

In response to your oral request for our opinion.

It appears a Mr. Sherwood B. Owens is charged with working miners underground more than eight hours a day and you ask us for an opinion as to whether he violated Section 56-115, A.C.A., 1939. This law was enacted as a safety measure for the protection of miners working underground.

In the case of State v. Dominion Hotel, 17 Ariz. 267, 151 P. 958, our Supreme Court had this to say:

"* * * The law is well settled that legislation which restricts the number of hours of labor which may be performed in one day in certain occupations declared detrimental or considered detrimental to the health or safety of the laborer is a valid exercise of the police power of the state. Lochner v. New York, 198 U.S. 45, 3 Ann. Cas. 1133, 49 L.Ed. 937, 25 Sup. Ct. Rep. 539; Holden v. Hardy, 169 U.S. 366, 42 L.Ed. 780, 18 Sup. Ct. Rep. 383; Ex parte Kair, 28 Nev. 425, 6 Ann. Cas. 893, 82 Pac. 453; State v. Livingston Concrete Bldg. & Mfg. Co., 34 Mont. 571, 9 Ann. Cas. 204, 87 Pac. 980."

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Hours of labor in underground workings is within the legislative discretion to determine what is best for the safety and health of underground miners and the Legislature having determined the number of hours to be employed by such miners for safe mining operations, that determination is conclusive.

We have carefully studied Mr. Fickett's letter wherein he cites the case of South Carolina v. Barnwell Bros. We can find no application to this case to the case against Mr. Owens.

We can well see where the health, safety, and welfare of a miner working underground is to be protected the same as a girl working in a restaurant as considered in the above cited Arizona case. We believe the complaint states a cause of action under said Section 56-115.

We suggest you submit this to Mr. Sult, the County Attorney, and assure him we will be more than pleased to assist him with any difficulty he may run into.

Yours very truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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