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ARIZONA ATTORNEY GENERAL

August 11, 1953
Opinion No. 53-151

TO: Mr. I. P. McBride
Railway Safety Inspector
Arizona Corporation Commission
State Capitol
Phoenix, Arizona

RE: "Full Crew" requirements

QUESTION: Must a railroad company which leases railroad equipment for use in the conduct of its business operate such equipment in compliance with Sections 69-121 and 69-122, A.C.A. 1939, during the time such equipment is under its direction and control?

This is in reply to your letter of July 27, 1953, requesting an opinion as to whether the T. C. & G. B. Railroad, when operating an engine leased from the Phelps-Dodge Corporation within the limits of the T. C. & G. B. Railroad yards, must comply with the "Full Crew" train law. Section 69-121, A.C.A. 1939, which bears upon this matter provides, in pertinent part, as follows:

"69-121. Train crews--Failure to use full crews.--Penalty.

* * * * *

All engines used in switching or placing cars within the limits of any railroad yard shall be equipped with and shall carry a crew of not less than one (1) engineer and one (1) fireman."

Section 69-122, A.C.A. 1939, reads in part:

"69-122. 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 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

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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. * * *"

It will be noted from the above Sections that the "Full Crew" law applies to the operation of any engine by a railroad company.

The particular question presented is whether the use by T. C. & G. B. Railroad Company of equipment not owned by that railroad company relieves it of the responsibility of compliance with the above cited Sections.

The general rule dealing with the use of equipment by a railroad company, which equipment has been received from another company, may be found in 74 C.J.S. Railroads, Section 368, which reads, in pertinent part, as follows, i.e. 900:

"§368. Companies Owning or Using Cars
* * * a. In General * * * A railroad company using for its own purpose a car received from another company must be regarded as having adopted it as part of its own equipment, and it is subject to the same liability in its use as if it were itself the owner of the car; * * *"

It is the opinion of this office, after an application of the above legal principles to the facts as stated, that the leased engine, while used by the railroad company and under its supervision and control, must be operated in compliance with the "Full Crew" law. The fact that the engine may be used by the railroad company at irregular or short periods of time, does not affect the responsibility of the railroad company. The engine, at any time it is being used by the T. C. & G. B. Railroad Company must be operated in compliance with the "Full Crew" law.

ROSS F. JONES
The Attorney General

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