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November 4, 1959  
Opinion No. 59-147

REQUESTED BY: William F. "Pat" Vipperman, Jr.  
State Representative

OPINION BY: WADE CHURCH, The Attorney General

QUESTIONS:

1. What is the state law with respect to crew requirements on railroads operated within the State of Arizona?
2. Whose duty is it to enforce this law?
3. Who is liable for violation of this law?

CONCLUSIONS:

1. (See body of opinion)
2. (See body of opinion)
3. (See body of opinion)

Question 1. The following statutes cover the State Law with respect to crew requirements on railroads operated within the State of Arizona:

Article 4. CREW REQUIREMENTS.

§ 40-881. TRAIN CREW REQUIREMENTS:

"A. A single locomotive, or a single locomotive with tender, when operated outside yard limits, shall carry a crew of not less than one engineer, one fireman, and one conductor or flagman. This subsection shall not apply to helper locomotives going or returning a distance of twenty-five miles.

B. A passenger, mail or express train composed of less than six cars, when operated outside yard limits shall carry a crew consisting of not less than one engineer, one fireman, one conductor, one baggagemaster and one flagman. This subsection shall not apply to gasoline motor cars.

C. A passenger, mail or express train composed of six or more cars, when operated outside yard limits shall carry a crew consisting of not less than one

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engineer, one fireman, one conductor, one baggagemaster, one flagman and one brakeman.

D. A freight train composed of fewer than forty cars, when operated outside yard limits, shall carry a crew consisting of not less than one engineer, one fireman, one conductor, one flagman and one brakeman.

E. A freight train composed of forty or more cars, when operated outside yard limits, shall carry a crew consisting of not less than one engineer, one fireman, one conductor, one flagman and two brakemen.

F. All local freight trains doing switching, or unloading freight of whatever nature, shall carry a crew consisting of one conductor, one engineer, one fireman, two brakemen and one flagman.

G. All trains other than those described in the preceding subsections of this section, when operated outside yard limits, shall carry a crew consisting of not less than one engineer, one fireman, one conductor, one flagman and one brakeman.

H. Flagmen mentioned in the preceding subsections of this section shall have had at least one year of experience as brakemen.

I. Engines used in switching or placing cars within the limits of a railroad yard shall carry a crew of not less than one engineer and one fireman."

§ 48-882. TRAIN CREWS; PENALTY FOR VIOLATION OF FULL CREW REQUIREMENTS.

"A. It is unlawful for any railroad company, or for the receiver of such company, to run upon any railroad or any part thereof within this state, any train, locomotive or engine which does not carry for use in its operation, a full crew as provided by § 40-881.

B. Each railroad company or receiver who runs upon any railroad or any part thereof within this state, any train, locomotive or engine which does not carry for use in its operation a full crew as provided by § 40-881, is liable to the state for a penalty of not less than one hundred dollars for every such offense.

C. All actions for penalties to be recovered under this section shall be brought and prosecuted to judgment in the name of the state, as plaintiff, in a court of competent jurisdiction in the county of Maricopa, or in any county in the state into or through which the defendant's railroad line is operated, and the action shall be brought and prosecuted by the attorney general or under his direction, or by the county attorney of any such county."

§ 40-883. EXCEPTIONS TO FULL CREW REQUIREMENTS.

"A. Nothing contained in §§ 40-881 and 40-882 shall apply:

1. To relief or wrecking trains when a sufficient number of men are not immediately available to comply with those sections.
2. To any railroad less than forty miles long, including all of its operated lines.
3. When trains have been sent out or started at the last division point with the requisite number of employees, but, owing solely to disability or refusal of one or more of the employees to act, the train is left with less than a full crew.

B. No baggage master shall be required in the operation of a train upon which baggage is not carried."

§ 40-885. CREW ON LOCOMOTIVES PROPELLED BY MOTIVE POWER OTHER THAN STEAM; VIOLATION; CONSTRUCTION.

"A. A locomotive propelled by motive power other than steam, when propelling or moving itself and not more than one car or coach, shall carry a crew consisting of not less than one engineer and one fireman as a second man to assist the engineer in performing his duties, but the provisions of this section shall not apply to such locomotive unless it is being used for transporting passengers, freight or property for hire, nor shall the provisions of this section apply to electric street railway cars if the electric street railway cars are operated at least partly within the limits of any incorporated city or town.

B. Any person violating the provisions of this section is guilty of a misdemeanor.

C. As used in this section, 'locomotive' means any self-propelled unit operated by any form of energy or power, whether produced thereon or furnished from an outside source, and adapted for use in moving cars upon rails, or for transportation of passengers, freight or property upon rails.

D. This section shall be construed to be in addition to and supplemental to existing statutes of this state relating to the operation of common carriers by railroad and not in conflict therewith."

Question 2. If there is a violation of any of the provisions of A.R.S. §§ 40-881 or 40-882, "a penalty of not less than one hundred dollars for every such offense" is recoverable by the State in an action brought by the Attorney General or by the County Attorney in any county into which or through which the railroad operates a line. Violations of the law, if they exist, should therefore be reported to either the Attorney General or to any County Attorney in which the railroad operates a line.

Question 3. If there is a violation of A.R.S. § 40-885, such violation constitutes a misdemeanor and should be reported to the County Attorney in which the violation occurs or in any county where the railroad operates a line.

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Only the railroad company or a receiver who runs a railroad is liable for violations of A.R.S. §§ 40-881 or 40-882.

Any person involved in the violation is liable for violations of A.R.S. § 40-885. This would include both employers and employees.

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