

Opinion No. 14-1163

March 6, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: R. H. Beddow, State Mine Inspector, Gallup, New Mexico.

MINES.

State mine inspector may require owner of mines to provide ventilation and other safety appliances.

OPINION

{*13} In preparing the opinions of this office for publication, I have discovered our letter to you of date December 23, 1913, in which it is {*14} stated that there is nothing in the law of New Mexico authorizing the mine inspector to require owners or operators of mines to provide ventilation or other appliances necessary to the safety of miners.

While it is true that there is nothing in our law upon that subject, yet it appears that we overlooked the fact that Section 3, Article XXII of our Constitution provides that the Act of Congress of March 3, 1891, shall be and remain in force in this state. This Act of Congress provides a method whereby you can compel operators of coal mines to obey your orders and upon failure to do so a punishment is provided. For your convenience I have had a copy of the Act of Congress prepared and enclose it herewith, although it is probable that a printed copy thereof may be found in the files of your office.

CHAP. 564. -- An act for the protection of the lives of miners in the Territories.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in each organized and unorganized Territory of the United States wherein are located coal mines, the aggregate annual output of which shall be in excess of one thousand tons per annum, the President shall appoint a mine inspector, who shall hold office until his successor is appointed and qualified. Such inspector shall, before entering upon the discharge of his duties, give bond to the United States in the sum of two thousand dollars, conditioned for the faithful discharge of his duties.

Sec. 2. That no person shall be eligible for appointment as mine inspector under section one of this act who is not either a practical miner or mining engineer and who has not been a resident for at least six months in the Territory for which he shall be appointed; and no person who shall act as land agent, manager, or agent of any mine, or as mining engineer, or be interested in operating any mine in such Territory shall be at the same time an inspector under the provisions of this act.

Sec. 3. That it shall be the duty of the mine inspector provided for in this act to make careful and thorough inspection of each coal mine operated in such Territory, and to report at least annually upon the condition of each coal mine in said Territory with reference to the appliances for the safety of the miners, the number of air or ventilating shafts, the number of shafts or slopes for ingress or egress, the character and condition of the machinery for ventilating such mines, and the quantity of air supplied to same. Such report shall be made to the Governor of the Territory in which such mines are located and a duplicate thereof forwarded to the Secretary of the Interior, and in the case of an unorganized Territory directly to the Secretary of the Interior.

Sec. 4. That in case the said mine inspector shall report that any coal mine is not properly constructed or not furnished with reasonable and proper machinery and appliances for the safety of the {*15} miners and other employes, it shall be the duty of the governor of such organized Territory it shall be the duty of the Secretary of the Interior to give notice to the owners or managers of said coal mine that the said mine is unsafe and notifying them in what particular the same is unsafe, and requiring them to furnish or provide such additional machinery, slopes, entries, means of escape, ventilation, or other appliances necessary to the safety of the miners and other employes within a period to be in said notice named, and if the same be not furnished as required in such notice it shall be unlawful after the time fixed in such notice for the said owners or managers to operate said mine.

Sec. 5. That in all coal mines in the Territories of the United States the owners or managers shall provide at least two shafts, slopes, or other outlets, separated by natural strata of not less than one hundred and fifty feet in breadth, by which shafts, slopes, or outlets distinct means of ingress and egress shall always be available to the persons employed in said mine. And in case of the failure of any coal mine to be so provided it shall be the duty of the mine inspector to make report of such fact, and thereupon notice shall issue, as provided in section four of this act, and with the same force and effect.

Sec. 6. That the owners or managers of every coal mine at a depth of one hundred feet or more shall provide an adequate amount of ventilation of not less than fifty-five cubic feet of pure air per second, or thirty-three hundred cubic feet per minute, for every fifty men at work in said mine, and in like proportion for a greater number, which air shall by proper appliances or machinery be forced through such mine to the face of each and every working place, so as to dilute and render harmless and expel therefrom the noxious or poisonous gases; and all workings shall be kept clear of standing gas.

Sec. 7. That any mine owner or manager who shall continue to operate a mine after failure to comply with the requirements of this act and after the expiration of the period named in the notice provided for in section four of this act, shall be deemed guilty of a misdemeanor, and shall be fined not to exceed five hundred dollars.

Sec. 8. That in no case shall a furnace shaft be used or for the purposes of this act be deemed an escape shaft.

Sec. 9. That escape shafts shall be constructed in compliance with the requirements of this act within six months from the date of the passage hereof, unless the time shall be extended by the mine inspector, and in no case shall said time be extended to exceed one year from the passage of this act.

Sec. 10. That a metal speaking-tube from the top to the bottom of the shaft or slope, shall be provided in all cases, so that conversation may be carried on through the same.

Sec. 11. That an approved safety catch shall be provided and sufficient cover overhead on every carriage used in lowering or hoisting persons. And the mine inspector shall examine and pass upon the adequacy and safety of all such hoisting apparatus.

Sec. 12. That no child under fourteen years of age shall be employed in the underground workings of any mine, and no father or other person shall misrepresent the age of anybody so employed. {*16} Any person guilty of violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed one hundred dollars.

Sec. 13. That only experienced and competent and sober men shall be placed in charge of hoisting apparatus or engines. And the maximum number of persons who may ascend or descend upon any cage or hoisting apparatus shall be determined by the mine inspector.

Sec. 14. That it shall be unlawful for any inspector to enter and inspect any coal mine in his district and the work and machinery belonging thereto at all reasonable times, but so as not to impede or obstruct the working of the mine; and to make inquiry into the state of the mine, works, and machinery, and the ventilation and mode of lighting the same, and into all matters and things connected with or relating to the safety of the persons employed in or about the same, and especially to make inquiry whether the provisions of this act are complied with; and the owner or agent is hereby required to furnish means necessary for such entry, inspection, examination and inquiry, of which the said inspector shall make an entry in the record in his office, noting the time and material circumstances of the inspection.

Sec. 15. That in all cases of fatal accident a full report thereof shall be made by the mine owner or manager to the mine inspector, said report to be in the writing and made within ten days after such death shall have occurred.

Sec. 16. That as a cumulative remedy, in case of the failure of any owner or manager of any mine to comply with the requirements contained in the notice of the governor of such Territory or the Secretary of the Interior, given in pursuance of this act, any court of competent jurisdiction, or the judge of such court in vacation, may, on the application of the mine inspector in the name of the United States and supported by the recommendation of the governor of such Territory or of the Secretary of the Interior, issue an injunction restraining the further operation of such mine until such

requirements are complied with, and in order to obtain such injunction no bonds shall be required.

Sec. 17. That wherever the term "owner or manager" is used in this act the same shall include lessees or other persons controlling the operation of any mine. And in case of a violation of the provisions of this act by any corporation the managing officers and superintendents, and other managing agents of such corporation, shall be personally liable and shall be punished as provided in act for owners and managers.

Sec. 18. That the mine inspectors provided for in this act shall each receive a salary of two thousand per annum, and their actual traveling expenses when engaged in their duties.

Sec. 19. That whenever any organized Territory shall make or has made provision by law for the safe operation of mines within such Territory, and the governor of such Territory shall certify said fact with a copy of the said law to the Secretary of the Interior, then and thereafter the provisions of this act shall no longer be enforced in such organized Territory, but in lieu thereof the statute of such Territory shall be operative in lieu of this act.

Approved March 3, 1891.