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SPRINGFIELD

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FILE NO. 83-002

NATURAL RESOURCES:
"Fire Watch" and Pre-Shift
Examination of a Coal Mine

Brad Evilsizer
Director
Department of Mines and Minerals
704 William G. Stratton Building
Springfield, Illinois 62706

Dear Director Evilsizer:

I have your letter wherein you ask whether a "fire watch" may be performed in a mine without a pre-shift examination of the mine. In your letter you state that a "fire watch" is an inspection of the mine by a certified person when the mine is not being operated. It is performed as a safeguard for the protection and preservation of the mine property. According to information submitted with your request, a "fire watch" may include such functions as checking the belt line,

shuttle cars, battery chargers, and other equipment and areas in the mine. For the reasons hereinafter stated, it is my opinion that a "fire watch" may not be performed without a pre-shift examination of the mine.

The duties of certified mine examiners are set forth in article 6 of The Coal Mining Act (Ill. Rev. Stat. 1981, ch. 96 1/2, par. 601 et seq.). Section 6.04 of that Act (Ill. Rev. Stat. 1981, ch. 96 1/2, par. 604) sets forth requirements relative to pre-shift examinations of mines:

"(A) In gassy mines:

When the mine is to be operated he shall examine the prescribed working places of such mine within 4 hours before any workers in such shift, other than the examiner or the examiners designated by the Mine Manager to make the examination, enter the underground areas of the mine. Examine every active working place in the mine and make tests therein with a permissible flame safety lamp for accumulation of methane and oxygen deficiency in the air therein; examine seals and doors to determine whether they are functioning properly; inspect and test the roof, face and rib conditions in the working areas and on active roadways and travelways; inspect active roadways, travelways, approaches to abandoned workings and accessible falls in active sections for explosive gas and other hazards; and inspect to determine whether the air in each split is traveling in its proper course and in normal volume.

2. On non-coal producing shifts he shall examine the mine in its entirety the same as for a coal producing shift, except where men are to work only in the shaft, slope or drift or on the immediate shaft bottom, then only that area immediately surrounding the bottom need be examined.

(B) In non-gassy mines:

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1. He shall examine the underground areas in the mine at least once in each calendar day during which coal is produced. Such examination shall be made within 4 hours immediately preceding the beginning of the first coal-producing shift on such day.

2. On idle days he shall examine all sections of the mine where men are required to work.

3. On the idle nights, if the mine has been examined for the day shift and the men are to work in sections previously examined and no coal is to be mined, no further examination shall be required.

(C) One examination on each day when workers perform production or idle day work shall include the escape ways required by Sections 19.11 and 19.13." (Emphasis added.)

Sections 5.09 and 5.11 of the Act (Ill. Rev. Stat. 1981, ch. 96 1/2, pars. 509, 511) make it one of the duties of the mine manager to insure that the above examinations are carried out by a certified mine examiner.

It is axiomatic that the primary purpose of statutory construction is to ascertain and to effectuate the intention of the legislature. (People v. Robinson (1982), 89 Ill. 2d 469, 475.) The legislative intent behind the legislation at issue is ascertained easily since The Coal Mining Act is the current version of a long series of statutes dating back to 1899, all of which were enacted in effectuation of section 29 of article IV of the Illinois Constitution of 1870 which provided as follows:

" * * *

It shall be the duty of the general assembly to

pass such laws as may be necessary for the protection of operative miners * * * .

* * *

(Ill. Const. 1870, art. IV, § 29; see, also, Merlo v. Johnston City & Big Muddy Coal and Mining Co. (1913), 258 Ill. 328, 332.)

The Illinois Supreme Court has repeatedly made reference to this mandate when considering legislation concerning mine safety. (See, Fowler v. Johnston City & Big Muddy Coal & Mining Co. (1920), 292 Ill. 440, 451; Rogers v. St. Louis-Carterville Coal Co. (1912), 254 Ill. 104, 110; Starne v. People (1906), 222 Ill. 189, 198-99.) Further, it is well established that the provisions of The Coal Mining Act must be liberally construed with its purpose in mind. Cook v. Big Muddy-Carterville Mining Co. (1911), 249 Ill. 41, 47; Freeman Coal Mining Corp. v. Ruff (1967), 85 Ill. App. 2d 145, 150.

It is clear from the language of section 6.04 that the pre-shift examination requirement is not contingent upon the presence of coal-producing activities. Specifically, subsection 6.04(A)(2) requires a pre-shift examination in gassy mines "[o]n non-coal producing shifts * * * the same as for a coal producing shift * * * " except when the work is limited to the shaft, slope or drift or on the immediate shaft bottom of the mine. Similarly, subsection 6.04(B)(2) requires a pre-shift examination in nongassy mines "[o]n idle days * * * in

all sections of the mine where men are required to work". These provisions plainly evidence a legislative intent to require a pre-shift examination prior to the performance of any work in a mine, whether such work is coal-producing or non-coal-producing.

In the instant case, it is apparent that the performance of a "fire watch" involves activities which constitute work in the mine. The information submitted with your request indicates that a "fire watch" may include such functions as checking the belt line, shuttle cars, battery chargers, and other equipment and areas in the mine. Because the performance of these functions constitutes non-coal-producing work, section 6.04 of the Act requires a pre-shift examination in these circumstances.

This conclusion is consistent with the construction previously given to these and similar provisions of The Coal Mining Act. In Freeman Coal Mining Corp. v. Ruff (1967), 85 Ill. App. 2d 145, the court was asked to construe the phrase "when the mine is to be operated" as contained in sections 5.09 and 6.04 of the Act (Ill. Rev. Stat. 1981, ch. 96 1/2, pars. 509, 604). The court noted that there is no substantial difference in the exposure to danger between workers on a coal-producing shift as distinguished from workers on a non-

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coal-producing shift. Therefore, the court held the language at issue is applicable " * * * to workmen of any shift entering the underground areas". Freeman Coal Mining Corp. v. Ruff (1967), 85 Ill. App. 2d 145, 150-51.

In opinion No. S-210, issued August 28, 1970 (1970 Ill. Att'y Gen. Op. 145), Attorney General Scott was asked to interpret the provisions of section 6.04 of The Coal Mining Act (Ill. Rev. Stat. 1969, ch. 93, par. 6.04). This section was similar in all relevant respects to the current provisions. Specifically, Attorney General Scott was asked whether a mine operator has a legal right to work his foreman underground on days when the mine is not engaged in a coal-producing shift, due to vacations, holidays, strikes and weekends, after the foreman has examined the underground for fires, falls, ventilation and general safety conditions but without a pre-shift examination. Attorney General Scott advised that a mine operator did not have a legal right to do so, concluding on page 146 as follows:

" * * *

Since Chapter 93, Illinois Revised Statutes 1969, Paragraph 6.04 specifically requires examinations on idle days and nights, and since it was held in Freeman Coal Mining Corp. v. Ruff, 85 Ill. App. 2d 145, 228 N.E. 2d 279 (1967) that the phrase 'when the mine is to be operated' as used in Chapter 93, Illinois Revised Statutes 1969, Paragraphs 5.09 and 6.04, include both coal and non-coal producing shifts, it appears that before any workman may work underground

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in a mine the mine must be examined in accordance with the Illinois Coal Mining Act by a certified mine examiner."

Thus, it is appropriate to construe the pre-shift examination requirement in accordance with prior judicial interpretation and the official opinions of this office.

For these reasons, it is my opinion that a "fire watch" may not be performed without a pre-shift examination of the mine.

Very truly yours,


ATTORNEY GENERAL