

68.

MINES, AUTHORITY OF CHIEF OF DIVISION OF MINES TO  
ORDER OWNER OF MINE TO REMOVE MACHINE CUTTINGS  
DISCUSSED—REGULATIONS AS TO SAFETY OF EMPLOYES.

SYLLABUS:

*There is no statutory provision in the mining laws of Ohio which expressly authorizes or empowers the chief of the division of mines or district mine inspectors to make orders in reference to the removal of machine cuttings from mines. Whether machine cuttings can create the dangerous conditions legislated against in sections 898-25 and 898-27 is a question of fact to be determined by the chief of the division of mines and/or the district mine inspectors.*

*If the district mine inspectors or the chief of the division of mines should be of the opinion that machine cuttings in a mine endanger the safety of the employes therein engaged, in such event and upon such determination by the chief of the division of mines or his district mine inspectors, an order may be made as provided by sections 898-25 and 898-27.*

COLUMBUS, OHIO, January 26, 1933.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date, as well as your enclosure of a letter from James Berry, Chief, Division of Mines, requesting my opinion as to whether the chief of the division of mines has authority to compel the owner, operator or lessee of a mine to remove machine cuttings from a mine.

An examination of the provisions of the mining laws of Ohio, as enacted in 114 O. L. 603 (G. C. secs. 898-1 to 898-305, inclusive), reveals no statutory provision expressly authorizing or empowering the chief of the division of mines or his subordinates to compel or order the owner, operator or lessee of a mine to remove machine cuttings from a mine.

Sections 898-27 and 898-49, referred to by the chief of the division of mines in his letter, read as follows:

Sec. 898-27.

"In case the district mine inspector finds danger of an imminent and extraordinary character in any mine he shall immediately take such steps as he deems necessary to safeguard the employes, notifying the superintendent, mine foreman, or any person in charge of employes at once of the condition he has found and requiring him to exercise his authority in further safeguarding the employes and complying with the provisions of this act. In addition, before leaving the mine property, he shall make a report in writing setting forth clearly the dangerous conditions of imminent and extraordinary character found, the steps taken by him to safeguard the employes and confirming the orders or instructions given to the superintendent, mine foreman or other person in charge of employes. He shall make this report in triplicate, sending the original at once to the chief, division of mines, giving a copy to the mine superintendent, and retaining a copy for his files. This report and confirmation shall be considered an emergency report by him."

## Sec. 898-49.

"When in the judgment of the district mine inspector with the approval of the chief, division of mines, after a personal investigation by him, a mine or any section thereof contains sufficient accumulation of coal dust of a fineness capable of being thrown into the air by a concussion or other means in sufficient quantities to form an explosive dust mixture with the air, the owner, lessee or agent upon written order from the chief, division of mines, shall cause such entries wherein the aforesaid condition exists to be adequately rock-dusted, sprinkled or otherwise treated in order to remove the hazard."

Whether machine cuttings can or may create danger of an imminent or extraordinary character in a mine is a question of fact to be determined by the chief of the division of mines or his district mine inspectors. If the district mine inspectors or the chief of the division of mines should be of the opinion that machine cuttings in a mine endanger the safety of the employes therein engaged, in such event and upon such determination by the chief of the division of mines or his district mine inspectors, an order may be made as provided by section 898-27. Whether machine cuttings come within the purview of section 898-49 is also a factual question which must be determined by the chief of the division of mines or the district mine inspectors. Even if machine cuttings would come within the meaning of coal dust, as defined in section 898-49, the chief of the division of mines or the district mine inspectors could only order the owner, operator or lessee of the mine to either rock-dust, sprinkle or otherwise treat such hazard, since the statute does not empower those officers to order the owner, operator or lessee of a mine to remove coal dust from a mine. The legislature has expressly provided that the hazard of coal dust in a mine is to be eliminated by either rock-dusting, sprinkling or otherwise treating the coal dust.

Section 898-25, relating to the inspection of mines by district mine inspectors, provides in part as follows:

"If he finds that any matter, thing or practice, connected with any mine, and not prohibited specifically by law, is dangerous or defective, or that from a rigid enforcement of any of the specific provisions of this act, such matter, thing or practice would become dangerous and defective so as in his opinion to tend to the bodily injury of any person, such inspector shall give notice in writing to the owner, lessee, or agent of the mine, of the particulars in which such mine or any matter, thing or practice connected therewith is dangerous or defective, and require it to be remedied by making such changes as the conditions may require."

Under section 898-25, a district mine inspector may, in certain cases, by notice in writing call upon a mine operator to remedy any matter connected with the mine which, in the opinion of the mine inspector, is so dangerous or defective as to threaten or tend to the bodily injury of any person in the mine. The language of that section would be sufficient, in my opinion, to authorize a district mine inspector to order the removal of machine cuttings from a mine if the same were capable of being dangerous and tended to do bodily injury to persons within the mine. However, that is a question of fact which must be determined by the district mine inspector and which I need not pass upon in this opinion.

Incidentally, your attention is called to the fact that the legislature, in the enactment of the mining laws of Ohio, failed to make any provision penalizing the owner, operator, lessee or agent of a mine who fails to comply with an order made, pursuant to the provisions of sections 898-25 and 898-27, by either the chief of the division of mines or a district mine inspector.

Section 898-171, referred to by the chief of the division of mines in his letter, reads as follows:

“It shall be unlawful for the employer of a miner or loader of the contents of any car of coal to pass any part of such contents over a screen or other device, for the purpose of ascertaining or calculating the amount to be paid such miner or loader for mining or loading such contents, whereby the total weight of such contents shall be reduced or diminished unless otherwise agreed between employer and miner or loader. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction, shall be fined for each separate offense not less than three hundred dollars nor more than six hundred dollars.”

That section does not authorize or empower the chief of the division of mines to make any provisions in reference to the removal of machine cuttings from a mine.

Specifically answering your inquiry, I am of the opinion that there is no statutory provision in the mining laws of Ohio which expressly authorizes or empowers the chief of the division of mines or district mine inspectors to make orders in reference to the removal of machine cuttings from mines. Whether machine cuttings can create the dangerous conditions legislated against in sections 898-25 and 898-27 is a question of fact to be determined by the chief of the division of mines and/or the district mine inspectors.

If the district mine inspectors or the chief of the division of mines should be of the opinion that machine cuttings in a mine endanger the safety of the employes therein engaged, in such event and upon such determination by the chief of the division of mines or his district mine inspectors, an order may be made as provided by sections 898-25 and 898-27.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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69.

SALARY REDUCTION ACTS—EFFECTIVE DATE—APPLY TO ALL  
OFFICIALS TAKING OFFICE ON JANUARY 1, 1933.

*SYLLABUSs*

1. *Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5, passed by the 89th General Assembly at the third special session on September 30, 1932, approved by the Governor on October 3, 1932, and filed in the office of the Secretary of State on October 3, 1932, became effective as laws of Ohio at midnight of December 31, 1932.*