

1142.

MINES AND MINING—WASHROOMS AT COAL MINES FOR USE OF EMPLOYEES—SECTION 934-1 G. C. SUPPLEMENTARY TO SECTION 934 G. C.—PENAL PROVISIONS OF SECTION 976 G. C. APPLY TO SECTIONS 934 AND 934-1 G. C.

1. *An act of the legislature, which recites that it is intended to supplement a certain designated section, becomes a part of the original section, notwithstanding it is separately numbered, and previously enacted legislation applying to cases arising under the original statute also applies to the supplementary act.*

2. *Section 934-1 G. C. is supplementary to section 934 G. C. and the penal provisions of section 976 G. C., applying to section 934, may be invoked in case of a violation of said supplemental section.*

COLUMBUS, OHIO, April 9, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your communication of recent date reads:

“In connection with inclosed supplement to section 934 G. C., the question has arisen as to whether or not the penalty provided in section 976 G. C. and which is applicable to the original section 934 G. C. would apply to this supplement to section 934 G. C., which is to be effective on April 30, 1920.

We would like to have your opinion on this point since the question has been raised as to whether or not the penalty will apply to this supplement.”

Sections 934 and 976 of the General Code were enacted as a part of the act amending the mining code in 101 Ohio Laws, page 52. The former designates certain requirements relative to mine owners, lessees or agents providing stretchers, blankets, and in certain cases oil for emergencies. The latter, which was amended in 107 O. L., page 630, is a penal section which specifically enumerates the violations for which penalties are provided, and owing to its length only that part will be herein quoted which is believed to be pertinent to your inquiry, as follows:

“Sec. 976 \* \* \* Any owner, lessee or agent of a mine, or any person, firm or corporation opening a new mine, having written knowledge of a violation of this act, who wilfully refuses or neglects to comply with the provisions of sections \* \* \* nine hundred and thirty-four, \* \* \* of the General Code, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than fifty dollars, and for a second or any subsequent offense shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the court. \* \* \*”

Section 934-1, which was passed April 8, 1919, and as you suggest becomes effective April 30, 1920, was entitled:

“An act to supplement section 934 of the General Code by the enactment of section 934-1, requiring washrooms to be provided and maintained at coal mines for the use of employes.”

which said title sufficiently sets forth the purpose of the said statute. It now becomes essential to consider whether or not said supplemental section is to be re-

garded as a part of the original act and as such subject to the penal provisions of section 976, supra.

In the case of *City of Cincinnati vs. Taft*, 63 O. S., 163, Chief Justice Shauck in his opinion in part said:

"The act before us is supplementary to that whose validity was \* \* \* affirmed. Counsel for the plaintiff are aware of the familiar rule that supplementary acts are, in their interpretation, subject to the same rules as those which they supplement, to the end that the entire body of legislation so related may operate harmoniously. Nor do we understand them to deny that this rule embraces all constitutional questions which may have been involved in the original act."

In the case of *Miller vs. Miller et al.*, 21 O. C. C. (n. s.) 181, it was held:

"Where the legislature in the enactment of a law states that it is to supplement a certain statute, it thereby becomes a part of that statute, even though separately numbered, and another previously enacted law applying to cases arising under the original statute applies also to cases arising under the supplementary section as well."

It will be observed that in effect the operation of a supplemental section is very similar to an amendment. As stated by the lexicographers, "to supplement" means "to fill up or supply by additions; to add to or something added to a thing to complete it." In fact the authorities generally concede that a supplement to a statute is a form of amendment and the courts have frequently held that an amended section is to be treated as if it were a part of the original act.

The supplement under consideration is of the same general import as the original section; that is, it relates to the protection, safety and health of the mining employe. It is to be presumed that the legislature was aware of the penal provisions of section 976 as operating upon section 934, and it is to be further assumed that said legislature intended that the provisions of the supplement should be enforced in the same manner as that provided for the original section. It may further be properly assumed that the legislature was cognizant of the rulings of the courts relative to the effect of a supplemental act, upon which it relied, which accounts for its failure to specifically provide a penalty in the enactment of said supplemental act.

In view of the foregoing, I am of the opinion that section 934-1 G. C. should be considered as a part of section 934 G. C. and that the penal provisions of section 976 can be invoked in case of a violation of said supplemental section.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*