

2365.

WASH ROOM FOR MINERS—WHOSE DUTY IT IS TO PROVIDE AND MAINTAIN SAME—MUST BE IN SANITARY CONDITION—WHERE COMPLAINT MADE TO INDUSTRIAL COMMISSION—MAY ISSUE ORDERS TO CORRECT SUCH CONDITION.

*Under the provisions of section 934-1 G. C., it is the duty of every owner, lessee or agent of a coal mine where ten or more persons are employed to provide and maintain a wash room, adequate for the accommodation of employes, in a properly sanitary condition.*

*Under section 871-23 G. C., upon complaint being made to the Industrial Commission, or upon its own motion, it has power to inquire into the condition that exists at any place of employment and if found to be in an unsafe condition or a condition injurious to the welfare of employes, it may make such orders as are necessary to correct such conditions. Such orders when so made have the effect of law.*

COLUMBUS, OHIO, August 24, 1921.

*Department of Industrial Relations, HON. PERCY TETLOW, Director, Columbus, Ohio.*

GENTLEMEN:—In your recent communication you request my opinion on a state of facts disclosed in a letter to you from William Robinett, chief of the division of mines, which you enclose. Said letter is as follows:

“This department is receiving repeated complaints relative to the unsanitary condition in which the wash rooms at some of the mines are kept, and the question has arisen as to whether the operator of such a mine or the miners, for whose use the wash room is provided, is responsible for its care.

Section 934-1 G. C. reads as follows:

‘Every owner, lessee or agent of a coal mine, where ten or more persons are employed, shall provide and keep in repair a wash room, convenient to the principal mine entrance, adequate for the accommodation of employes, for the purpose of washing and changing their clothes when entering and returning from the mine. Such wash room shall be properly lighted and heated, supplied with warm and cold water and adequate and proper facilities for washing purposes.’

It would seem that inasmuch as the operator is required to supply the wash room, all equipment for it, and to see that it is kept in repair, he should also see that it is kept clean. This, however, is the point of contention, and we therefore request that the above be submitted to the Attorney-General that it may be determined if the section above quoted is sufficiently specific to compel the operators or miners to assume this responsibility.”

Section 934-1 G. C., which is quoted in the above letter and need not be repeated herein, was passed by the legislature in the exercise of the police power of the state in attempting to provide for the health and safety of mine workmen. The purpose of the statute is too apparent to require discussion. It is evident from reading said section that it was the intent of the legislature that adequate provisions for the accommodation of mine employes should be available at all times for the convenience of the miners, to the end that they may have a proper place to wash and change their clothes after returning from the mine, and “the legislative intent is the pole-star of

all judicial interpretation" (17 O. S. 125). Keeping in view the purposes and the apparent intent of the legislature in considering the language used in said section, it renders your question comparatively simple.

The following definitions as given by the lexicographers will render some assistance in determining this matter:

"Adequate—Equal to requirement or occasion; commensurate; fully sufficient, suitable or fit \* \* \*."

*Century Dictionary.*

Also see *Corpus Juris*, Vol. I, page 1192.

"Repair—To restore to a sound, good or complete state after decay, injury, delapidation or partial destruction; restore; renovate."

*Century Dictionary.*

The *Standard Dictionary*, which was quoted in the case of *Farrahar vs. Keokuk*, 111 Iowa 310, and 82 N. W. 773, indicated that the word "repair" was a synonym for "maintain". See 34 Cyc. 1339.

"Provide—To make ready; prepare."

*Century Dictionary.*

"Provide—To look out for in advance; to procure before hand; to get, collect or make ready for future use; to prepare."

*Webster's Dictionary.*

Also see 32 Cyc. 740.

In construing said section 934-1 G. C. in the light of the foregoing definitions, it will be observed that the mandate to "provide" has an element of continuing action in connection with the subject, for instance, a man may be bound under the law to provide for his family, which, of course, does not mean for one day or for one meal, but the law requires that the same shall continue. The further use of the words "keep in repair" in connection with the mandatory provision of said section can logically be construed to mean that the said wash room shall be maintained. While the word "repair" may have different shades of meaning, depending upon the different connections in which it is used, it is not believed to do violence to the term to construe it in connection with the language used in said section as meaning "maintain". When we speak of repair in connection with real property as between a landlord and tenant, of course, it could hardly be construed to mean that the term would include janitor's service when we speak of that term generally, yet if the term were used in granting power to an executor to rent and keep in repair a certain building in which it was the established custom to furnish janitor service, under such circumstances, undoubtedly the term "repair" would be broad enough to include such service. And the further term "adequate for the accommodation of employes" carries with it the same idea of continuing benefits, available at all times for the workmen at the particular mine.

The very nature of this law being for the protection of the health and safety of the workmen, it would necessarily be required that a place of this character be in a reasonably sanitary condition. The language used in this respect says that it shall be adequate or fully sufficient, and suitable or fit. This necessarily would imply that it be kept in a proper state of cleanliness. The question of what is and what is not a properly sanitary condition for a

place of this character is not before me, and no attempt is herein made to express what would be as a matter of fact such a status. However, as a proposition of law, I have no hesitation in saying that it must be of a reasonably sanitary character, so as to in no way endanger the health of the workmen.

In further considering the question you present it would seem proper to consider the provisions of section 871-23 G. C., which provides:

"Sec. 871-23. (1) Upon petition after the first day of September, 1913, by any person that any employment or place of employment is not safe or is injurious to the welfare of any employe or frequenter, the commission shall proceed with or without notice to make such investigation as may be necessary to determine the matter complained of.

(2) After such hearing as may be necessary, the commission may enter such order relative thereto as may be necessary to render such employment or place of employment safe and not injurious to the welfare of the employes therein or frequenters thereof.

(3) Whenever the commission shall learn that any employment or place of employment is not safe or is injurious to the welfare of any employe or frequenter, it may of its own motion summarily investigate the same, with or without notice and issue such order as may be necessary thereto."

This section clearly authorizes the industrial commission to conduct a hearing upon the complaint of any one relative to a place of employment being unsafe or injurious to the welfare of any employe. The following is quoted from section 871-13 G. C., a part of the industrial commission act, which seems important to consider in connection with the provisions of section 871-23 and section 934-1, heretofore quoted:

"Sec. 871-13. The following terms as used in this act shall be construed as follows:

(1) The phrase 'place of employment,' shall mean and include every place, whether indoors or out, or under ground, and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business, is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is directly or indirectly, employed by another for direct or indirect gain or profit but shall not include any place where persons are employed in private domestic service or agricultural pursuits which do not involve the use of mechanical power.

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(10) The term 'welfare,' shall mean and include comfort, decency and moral well-being.

(11) The terms 'safe,' and 'safety,' as applied to any employment or a place of employment shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters as the nature of the employment will reasonably permit, including requirements as to the hours of labor with relation to the health and welfare of employes."

In considering the provisions of the industrial commission act in connection with the section about which you inquire, it is clear that the wash

room, required to be provided under the provisions of section 934-1, constitutes a part of the place of employment at any mine at which it exists. This being a place of employment, it necessarily follows that under the provisions of the industrial commission law, heretofore set forth, upon complaint being made to the industrial commission they have full authority to investigate and conduct a hearing relative to said place of employment being unsafe or injurious to the welfare of any employe.

From the definitions above quoted as given by the legislature, it is clear that any condition that affects the health of an employe would be within the terms of the sections above quoted.

In view of the foregoing citations and discussion, it is the opinion of this department that section 934-1 G. C. clearly discloses that it was the intent of the legislature that the owner of a mine should provide a wash room adequate for the accommodation of employes and that such a room shall be maintained by said owner in a reasonably sanitary condition. Under the powers granted to the industrial commission, upon complaint being made to it or upon its own motion, it may inquire into the conditions affecting the health and safety of employes at any particular place of employment, which authorizes it to determine whether or not a wash room is in such condition as to be injurious to the welfare of miners, and grant such orders in connection therewith as may be necessary. Such orders as are properly made have the effect of law.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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2366.

APPROVAL, BONDS OF ELYRIA TOWNSHIP RURAL SCHOOL DISTRICT IN AMOUNT OF \$10,000.

COLUMBUS, OHIO, August 25, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2367.

APPROVAL, BRIDGE BONDS OF MONTGOMERY COUNTY IN AMOUNT OF \$18,000.

COLUMBUS, OHIO, August 25, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*