

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1935

No. 636

JAMES WALTER CARTER, PETITIONER,

vs.

CARTER COAL COMPANY, GEORGE L. CARTER,
AS VICE-PRESIDENT AND A DIRECTOR OF SAID
COMPANY, ET AL.

No.

GUY T. HELVERING, INDIVIDUALLY AND AS COM-
MISSIONER OF INTERNAL REVENUE OF THE
UNITED STATES, ET AL., PETITIONERS,

vs.

JAMES WALTER CARTER ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

VOL. II.

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Article IX

Amendments

These By-Laws, or any of them, may be altered, amended or repealed or new By-Laws may be made by the stock-[fol. 841] holders or, at any meeting of the Board of Directors, by vote of a majority of the whole Board of Directors, provided that the proposed action in respect thereof shall be stated in the notice of such meeting. By-Laws made, altered or amended by the Board of Directors shall be subject to alteration, amendment or repeal by the stockholders.

[fol. 842]

PL'FF's Ex. 5

James Walter Carter

Stevenson, Maryland

New York, N. Y., August 30th, 1935.

To Carter Coal Company and the Board of Directors thereof:

It is my opinion, based upon advice of counsel, that the Bituminous Coal Conservation Act of 1935 and particularly the sections thereof which purport to regulate the conduct of the business of this Company and those which are designed to coerce this Company into acceptance of the Bituminous Coal Code provided for in that Act, are unconstitutional and void and cannot lawfully be enforced as against Carter Coal Company; that acceptance of the said Code and compliance therewith by Carter Coal Company would deprive the Company and its stockholders of their constitutional and property rights and would constitute a surrender of the most vital functions of the Company and its directors in the management of the business of the said Company and would be ultra vires; and that the payment of the so-called taxes provided in the said Act would constitute a waste and misappropriation of the assets of the Company.

It is also my opinion that acceptance of the said Code would be detrimental to the interests of the Company, would increase the costs of the Company and the selling prices of

the coal produced by it, which would result in a loss of customers to competitors, and destruction of the business of the Company.

As President of the Company I suggest, and as a shareholder therein I demand, that the Company and its Directors shall refrain from complying with the Act, shall refrain from becoming a member of the Code provided for therein, and shall refuse to pay the taxes imposed thereby.

I further suggest and demand that the Company and its Directors shall contest the constitutionality of said Act and prevent an unconstitutional and improper diversion of the assets of the Company in the payment of the taxes provided by said Act, and that the Company shall apply to a court of competent jurisdiction to determine the liability of the Company under said Act, and take such steps as shall be necessary to protect the rights of the Company and its shareholders.

James Walter Carter.

JWC:AP.

[fol. 843]

PL'FF's Ex. 6

Carter Coal Company

The undersigned, C. A. Hall, hereby certifies that he is Secretary of Carter Coal Company, a Delaware corporation, and that the copy of minutes attached hereto is a true and correct conformed copy of the minutes of a special meeting of the Board of Directors of said Corporation, held on Friday, August 30, 1935, that a quorum was present and acted throughout at said meeting, and that the resolutions set forth in said minutes were duly adopted by a majority of the directors of the Corporation.

Dated October 21, 1935.

C. A. Hall, Secretary. (Corporate Seal.)

[fol. 844] Minutes of Special Meeting of the Board of Directors of Carter Coal Company, a Delaware corporation, held at the office of the Corporation, No. 230 Park Avenue, New York, N. Y., at four o'clock P. M. (Daylight Saving Time), on Friday, August 30, 1935, pursuant to waiver of notice.

The following directors were present: Messrs. James W. Carter, George L. Carter, and C. A. Hall, constituting all of the directors of the Corporation.

Mr. James W. Carter, the President of the Corporation, presided and Mr. C. A. Hall, the Secretary of the Corporation, acted as secretary and kept the minutes.

The Chairman reported that a waiver of notice and consent to the holding of the meeting had been obtained from all of the directors in accordance with the By-laws of the Corporation and directed that said consent and waiver be annexed to the minutes of the meeting. A copy thereof is as follows:

[fol. 845] “Carter Coal Company

“Consent and Waiver of Notice of Special Meeting of
Board of Directors

“We, the undersigned, being all the directors of Carter Coal Company, a Delaware corporation, do hereby waive notice of the time, place and purposes of a Special Meeting of the Board of Directors of said Corporation, and do hereby consent that said Special Meeting be held at four o'clock in the afternoon on August 30, 1935, at No. 230 Park Avenue, New York, N. Y., for the following purposes:

“(1) to consider and take action with respect to the policy to be pursued by the Corporation in connection with the Bituminous Coal Conservation Act of 1935 and the code provided for therein; and

“(2) for the transaction of such other business as may come before the meeting.

“Dated New York, N. Y., August 30, 1935.
Geo. L. Carter, James Walter Carter, C. A. Hall.”

The Chairman stated that the Bituminous Coal Conservation Act of 1935 had been signed by the President of the United States and was therefore effective and further stated that the meeting had been called for the purpose of considering the policy to be adopted by the Corporation and the steps to be taken by the Corporation in connection with said Act and the code provided for thereunder, and that these were matters of vital interest to the Corporation.

[fol. 846] He then submitted and read to the meeting the following demand:

“August 30, 1935.

“To Carter Coal Company and the Board of Directors thereof:

“It is my opinion, based upon advice of counsel, that the Bituminous Coal Conservation Act of 1935 and particularly the sections thereof which purport to regulate the conduct of the business of this Company and those which are designed to coerce this Company into acceptance of the Bituminous Coal Code provided for in that Act, are unconstitutional and void and cannot lawfully be enforced as against Carter Coal Company; that acceptance of the said Code and compliance therewith by Carter Coal Company would deprive the Company and its stockholders of their constitutional and property rights and would constitute a surrender of the most vital functions of the Company and its directors in the management of the business of the said Company and would be ultra vires; and that the payment of the so-called taxes provided in the said Act would constitute a waste and misappropriation of the assets of the Company.

“It is also my opinion that acceptance of the said Code would be detrimental to the interests of the Company, would increase the costs of the Company and the selling prices of the coal produced by it, which would result in a loss of customers to competitors, and destruction of the business of the Company.

“As President of the Company I suggest, and as a shareholder therein I demand, that the Company and its Directors shall refrain from complying with the Act, shall refrain from becoming a member of the Code provided for therein, and shall refuse to pay the taxes imposed thereby.

“I further suggest and demand that the Company and its Directors shall contest the constitutionality of said Act and prevent an unconstitutional and improper diversion of [fol. 847] the assets of the Company in the payment of the taxes provided by said Act, and that the Company shall apply to a court of competent jurisdiction to determine the liability of the Company under said Act, and take such steps as shall be necessary to protect the rights of the Company and its shareholders.

(Signed) James Walter Carter.”

Mr. George L. Carter then stated that he agreed that the Bituminous Coal Conservation Act was unconstitutional and in addition was unsound in its economic aspects but he pointed out, however, that if the Corporation should not join the code it would be subjected under the Act to a 15% tax on the sales price of all coal produced and sold by the Corporation, the payment of which penalty would ultimately ruin the Corporation financially and bring it to bankruptcy. He said that he did not think that the Corporation could afford to take such a risk in the event that the courts should rule that the Act was constitutional, so that the only alternative open to the Corporation was to accept membership in the code provided for in the Act and comply with said code even though such compliance would be as a business matter to the adverse interests of the Corporation.

Mr. Hall stated that he concurred in the views expressed by Mr. George L. Carter and that he felt that the Corporation must adopt a conservative course and could not take [fol. 848] the risk of staying out of the code and allowing taxes and penalties to accrue during the period it would necessarily take to contest the constitutionality of the Act in the courts.

Thereupon, after discussion, upon motion duly made and seconded, the following resolution was adopted by majority of the members of the Board (Mr. James W. Carter voting in the negative) :

Whereas it is the unanimous opinion of the Members of this Board that the Bituminous Coal Conservation Act of 1935, approved August 30, 1935, is unconstitutional and is economically unsound, and that it would adversely affect the business of this Company and the interests of its shareholders for this Company to accept and obligate itself to comply with the Code provided for therein; and

Whereas it is nevertheless the opinion of a majority of this Board that the Company must accept the Code provided for by said Act, because the extreme penalty for failure to accept the same, in the form of a 15% tax on its gross sales, would result in serious damage to the Company and might result in its bankruptcy;

Resolved that the Company shall accept the Code provided for in said Act, and that the proper officers of the

Company are hereby authorized and directed to take all action which may be necessary in the premises.

The Chairman then stated that he intended to exercise his prerogative under the By-laws of the Corporation of calling a special meeting of the stockholders to consider and take action with respect to the resolution which had been adopted by a majority of the directors over his dissent. [fol. 849] There being no further business to come before the meeting, it was, on motion duly made and seconded, adjourned.

C. A. Hall, Secretary.

[fol. 850]

PL'FF's Ex. 7

Carter Coal Company

The undersigned, C. A. Hall, hereby certifies that he is Secretary of Carter Coal Company, a Delaware corporation, and that the copy of minutes attached hereto is a true and correct conformed copy of the minutes of a special meeting of the stockholders of said Corporation, held on Friday, August 30, 1935, that a quorum was present and acted throughout at said meeting, and that the resolutions set forth in said minutes were duly adopted by a majority in interest of the voting stockholders of the Corporation.

Dated, October 21, 1935.

C. A. Hall, Secretary. (Corporate Seal.)

[fol. 851] Minutes of Special Meeting of Stockholders of Carter Coal Company, a Delaware corporation, held at the office of the Corporation, No. 230 Park Avenue, New York, N. Y., at five o'clock P. M. (Daylight Saving Time), on Friday, August 30, 1935, pursuant to waiver of notice.

Mr. James W. Carter, the President of the Corporation, acted as Chairman of the meeting and called the meeting to order. Mr. C. A. Hall, the Secretary of the Corporation, acted as secretary of the meeting.

The Chairman instructed the Secretary to take the names of the stockholders who were present in person or by proxy and to ascertain and report to the meeting the number of shares of stock of the Corporation, the holders of which

were present in person or by proxy and entitled to vote at the meeting.

The Secretary, having taken the names of the stockholders present in person and by proxy, reported that there were present at the meeting in person or represented by proxy the holders of record of 30,000 shares of the Class [fol. 852] A Common Stock of the Corporation (being all of the outstanding shares thereof) and 34,187 shares of the Preferred Stock of the Corporation (being all of the outstanding shares thereof) and he submitted a list of the holders of such stock of the Corporation present in person or represented by proxy and entitled to vote thereat and the number of shares held by each.

The names on such list were as follows:

Stockholders Present in Person

Name	Number of Class A Common Shares	Number of Preferred Shares
James W. Carter	15,000	9,733
Margaret Woolfolk Carter	None	5,100
George L. Carter	15,000	9,948

Stockholders Present by Proxy

Name	Number of Class A Common Shares	Number of Preferred Shares
Mayetta W. Carter	None	9,406

The Chairman thereupon announced that a quorum was present.

The Chairman then stated that a consent to the holding of the meeting and waiver of notice thereof had been obtained from all of the stockholders of record of the Corporation entitled to vote at the meeting and directed that said consent and waiver of notice be annexed to the minutes of the meeting. A copy thereof is as follows:

“Carter Coal Company

“Consent and Waiver of Notice of Special Meeting of
Stockholders

“The undersigned, stockholders of Carter Coal Company, a Delaware corporation, do hereby waive notice of

the time, place and purposes of a Special Meeting of the stockholders of said Corporation, and do hereby consent that said Special Meeting be held at five o'clock in the afternoon on August 30, 1935, at No. 230 Park Avenue, New York, N. Y., for the following purposes:

“(1) to consider and take action with respect to the policy to be pursued by the Corporation and the action to be taken by the Corporation in connection with the Bituminous Coal Conservation Act of 1935 and the code provided for therein; and

“(2) for the transaction of such other business as may come before the meeting.

“Dated New York, N. Y., August 30, 1935.

Geo. L. Carter, Mayetta W. Carter, by Geo. L. Carter, Atty. in Fact. Margaret Woolfolk Carter. James Walter Carter.”

[fol. 854] The Chairman then stated that the Bituminous Coal Conservation Act of 1935 had been signed by the President of the United States and had thereby become law and that the Corporation was affected in important aspects by said Act and the code provided for therein. He then stated that there had previously been held on the same day a special meeting of the Board of Directors of the Corporation and that at said meeting he had submitted a demand, which he then read to the meeting, and a copy of which is as follows:

“August 30, 1935.

“To Carter Coal Company and the Board of Directors thereof:

“It is my opinion, based upon advice of counsel, that the Bituminous Coal Conservation Act of 1935 and particularly the sections thereof which purport to regulate the conduct of the business of this Company and those which are designed to coerce this Company into acceptance of the Bituminous Coal Code provided for in that Act, are unconstitutional and void and cannot lawfully be enforced as against Carter Coal Company; that acceptance of the said Code and compliance therewith by Carter Coal Company would deprive the Company and its stockholders of their

constitutional and property rights and would constitute a surrender of the most vital functions of the Company and its directors in the management of the business of the said Company and would be ultra vires; and that the payment of the so-called taxes provided in the said Act would constitute a waste and misappropriation of the assets of the Company.

“It is also my opinion that acceptance of the said Code would be detrimental to the interests of the Company, would increase the costs of the Company and the selling [fol. 855] prices of the coal produced by it, which would result in a loss of customers to competitors, and destruction of the business of the Company.

“As President of the Company I suggest, and as a shareholder therein I demand, that the Company and its Directors shall refrain from complying with the Act, shall refrain from becoming a member of the Code provided for therein, and shall refuse to pay the taxes imposed thereby.

“I further suggest and demand that the Company and its directors shall contest the constitutionality of said Act and prevent an unconstitutional and improper diversion of the assets of the Company in the payment of the taxes provided by said Act, and that the Company shall apply to a court of competent jurisdiction to determine the liability of the Company under said Act, and take such steps as shall be necessary to protect the rights of the Company and its shareholders.

(Signed) James Walter Carter.”

He further stated that at said directors' meeting a majority of the directors had adopted, over his dissent, the following resolution:

“Whereas it is the unanimous opinion of the Members of this Board that the Bituminous Coal Conservation Act of 1935, approved August 30, 1935, is unconstitutional and is economically unsound, and that it would adversely affect the business of this Company and the interests of its shareholders for this Company to accept and obligate itself to comply with the Code provided for therein; and

“Whereas it is nevertheless the opinion of a majority of this Board that the Company must accept the Code provided for by said Act, because the extreme penalty for

failure to accept the same, in the form of a 15% tax on its gross sales, would result in serious damage to the Company and might result in its bankruptcy;

“Resolved that the Company shall accept the Code provided for in said Act, and that the proper officers of the Company are hereby authorized and directed to take all action which may be necessary in the premises.”

[fol. 856] He then stated that in his opinion the action authorized by the directors would adversely affect the interests of the Corporation. He said that he had been advised by counsel that the Act was unconstitutional in so far as it purported to affect the Corporation and further stated that he was of the opinion that aside from the question of the constitutionality of the Act it was economically unsound and consequently the Corporation should refuse to join the code provided for in the Act, refuse to pay the taxes provided for therein to be assessed against non-code members, and take whatever steps might be necessary to contest in the courts the constitutionality of the Act.

Mr. George L. Carter then stated that the decision of the majority of the directors taken at the special meeting aforesaid had been carefully considered, that while he agreed that the Act seemed to him to be unconstitutional and that the Corporation would be adversely affected as a business matter by compliance with the code provided for in the Act, he did not believe that the Corporation could afford to take the risk of an adverse decision by the courts. He pointed out that under the Act any producer failing to join the code was subject to the imposition of a so-called “tax” of 15% upon the sales price of all coal produced and sold by the Corporation and that if the Corporation should [fol. 857] find itself in a position where it would be compelled to pay such a tax for any appreciable length of time, plus any penalties which might be imposed for refusal to pay the tax when assessed, the Corporation would be faced by financial ruin, so that the only alternative open to the Corporation seemed to him to be the acceptance of the code and compliance therewith.

Thereupon, after discussion, on motion duly made and seconded, the following resolution was adopted by a majority in interest of the voting stockholders of the Corporation:

Whereas this meeting has considered a demand addressed to the Company by its President and a preamble and resolution of the Board of Directors adopted on August 30, 1935, upon consideration of said demand;

Whereas a majority in interest of the holders of voting shares of this Company fully agrees with all of the conclusions set forth in said preamble and resolution of the Board of Directors; and

Whereas if the Company does not assent to the Code the exaction of the tax imposed by the Bituminous Coal Conservation Act of 1935 would ruin the Company financially and probably result in its bankruptcy;

Be it resolved that the said resolution of the Board of Directors of this Company, adopted on August 30, 1935, be and it hereby is in all respects approved, ratified and confirmed.

The Secretary reported that the vote upon said resolution had been as follows:

[fol. 858] For the Resolution		
Name	Number of Class A common shares	Number of preferred shares
George L. Carter.....	15,000	9,948
Mayetta W. Carter.....	9,406

Against the Resolution

Name	Number of Class A common shares	Number of preferred shares
James W. Carter.....	15,000	9,733
Margaret Woolfolk Carter.....	5,100

There being no further business to come before the meeting, it was, on motion duly made and seconded, adjourned.

C. A. Hall, Secretary.

[fol. 859] Laws of Delaware, 1929, Chapter 135, Section 4

“Board of Directors; Qualifications, Powers; Classes; Committees of Directors:—The business of every corporation organized under the provisions of this Chapter shall be managed by a Board of Directors, except as hereinafter

or in its Certificate of Incorporation otherwise provided. The number of directors which shall constitute the whole board shall be such as from time to time shall be fixed by, or in the manner provided in, the by-laws, but in no case shall the number be less than three. Directors need not be stockholders unless so required by the Certificate of Incorporation or the by-laws. The Directors shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business, unless the by-laws shall provide that a different number shall constitute a quorum, which in no case shall be less than one-third of the total number of directors nor less than two directors. The Board of Directors may(by resolution or resolutions, passed by a majority of the whole board, designate one or more committees, each committee to consist of two or more of the directors of the corporation, which to the extent provided in said resolution or resolutions or in the by-laws of the corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the Board of Directors. The directors of any corporation organized as aforesaid may, by the Certificate of Incorporation or any amendment thereto, or by a vote of the stockholders, be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter, and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. But the provisions of this Section shall not apply to corporations not for profit, for which it is desired to have no capital stock; and the business of every such corporation organized under the provisions of this Chapter shall be managed as provided in its Certificate of Incorporation. (as amend., Laws of Delaware, 1929, ch. 135, Sec. 4.)”

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MINING LAWS
OF THE
STATE OF WEST VIRGINIA

CHAPTER 22—CODE 1931

**(As Amended by the Legislature in Regular
Session, 1935)**

INCLUDING:

**The Child Labor Law of Chapter 21, Code
1931; the Law for the Safe Development and
Operation of Oil and Gas Wells, Code 1931;
Adjoining Owners, Code 1931; Explosives
Maliciously Placed, Acts 1933—and All Other
Laws Pertaining to Mining, Also Suggested
Mine Rules.**

1935 EDITION

Compiled By
WEST VIRGINIA DEPARTMENT OF MINES

1935

632

**Manufactured and for Sale by
HOME OFFICE SUPPLY COMPANY
Welch, West Virginia
E398**

MINING LAWS
OF THE
STATE OF WEST VIRGINIA

CHAPTER 22—CODE 1931

(As Amended by the Legislature in Regular
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WEST VIRGINIA DEPARTMENT OF MINES

1935

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MINES AND MINERALS
CHAPTER 22
Official Code West Virginia

Art.

1. **Department of Mines.**
2. **Coal Mines.**
3. **Sand and Clay Mines, Quarries and Cement Works.**
4. **Oil and Gas Wells.**

ARTICLE 1. Department of Mines.**Sec.**

1. Department of Mines.
2. Chief of department of mines; duties; term of office.
3. Same; qualifications; salary.
4. Same; oath; bond.
5. Same; record of inspections; authority.
6. Same; annual report to governor.
7. Mining districts; mine inspectors; term of office.
8. Mine inspector; qualifications; oath; bond; removal; salary and expenses.
9. Same; inspections; reports.
10. Mine rescue car; equipment; use for educational and training work.
11. Mine rescue crews.
12. Director of mine rescue work; qualifications; term of office; salary.
13. Offenses; penalties; jurisdiction.

§1. **Department of Mines.**—There shall be a state department of mines, which shall have for its purpose the supervision of the execution and enforcement of all state laws per-

taining to the inspection of mines, enacted for the safety of persons employed within or at the mines within this State and the protection of mine property and other property used in connection therewith. (1905, c. 46, §1; 1907, c. 78, §1; 1915, c. 10, §1; 1919, c. 32, §1; Code 1923, c. 15H, 10; 1925, c. 88, §1.)

§2. Chief of Department of Mines; Duties; Term of Office.—The department of mines shall be in charge of an official to be known as the chief of the department of mines, who shall be appointed by the governor, by and with the advice and consent of the senate. He shall have full charge of the department and shall supervise and direct the inspection of mines as provided by law. The chief of the department of mines in office on the date this Code takes effect shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. On or before the first day of January, nineteen hundred and thirty-four, and on or before the first day of January of each fourth year thereafter, the governor shall appoint a chief of the department of mines to serve for a term of four years, commencing on said first day of January. (1883, c. 70, §1; 1897, c. 59; 1901, c. 106, §§1a, 2c; 1905, c. 46, §1; 1907, c. 78, §1; 1915, c. 10, §§1, 2; 1919, c. 32; §§1, 2; Code 1923, c. 15H, §§10, 11; 1925, c. 88, §§1, 2.)

§3. Same; Qualifications; Salary.—The chief of the department of mines shall be a male citizen of West Virginia, and shall be a competent person, having had at least eight years' experience in the working, ventilation and drainage of coal mines. two years of

which have been in this State, and having a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma from any accredited engineering school shall qualify as two years' working experience. He shall devote all of his time to the duties of his office, and shall not be directly or indirectly interested in a financial way in any coal mines in this State. The salary of the chief of the department of mines shall be seven thousand dollars per annum, and traveling expenses, which shall be paid monthly out of the state treasury upon a requisition upon the state auditor, properly certified by the chief of the department of mines. (1883, c. 70, §§1, 2; 1897, c. 59; 1901, c. 106, §§1c, 2b; 1905, c. 46, §1; 1907, c. 78, §1; 1915, c. 10, §4; 1919, c. 32, §4; Code 1923, c. 15H, §11; 1925, c. 88, §4; 1929, c. 17.)

§4. Same; Oath; Bond.—The chief of the department of mines shall, before entering upon the discharge of his duties, take the oath of office prescribed by the Constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duty, a certificate of which oath and which bond shall be filed in the office of the secretary of state. (1883, c. 70, §2; 1897, c. 59; 1901, c. 106, §2a; 1905, c. 46, §2; 1907, c. 78, §2; 1915, c. 10, §3; Code 1923, c. 15H, §11; 1925, c. 88, §3.)

§5. Same; Record of Inspections; Authority.—The chief of the department of mines shall keep and index a permanent record of all inspections made by himself and the district mine inspectors. All records of the department of mines shall, at all times,

be open to the inspection of any citizen of this State, and shall be laid before the governor of the State upon his request at any time. The chief of the department of mines shall have authority to visit, enter and examine any mine and may call the assistance of any district mine inspector or inspectors to any mine. (1897, c. 59; 1901, c. 106, §1a; 1905, c. 46, §1; 1907, c. 78, §1; 1915, c. 10, §5; Code 1923, c. 15H, §11; 1925, c. 88, §5.)

§6. Same; Annual Report to Governor.—The chief of the department of mines shall annually make a full and complete written report of his proceedings to the governor of the State for the year ending the thirty-first day of December. Such report shall include the reports of the district mine inspectors, the number of visits and inspections, made in the State by the district inspectors, the quantity of coal and coke produced in the State, the number of men employed, number of mines operated, ovens in and out of blast, improvements made, prosecutions, and such other information in relation to the subject of mines, mining inspections and needed legislation as he may deem of public interest and beneficial to the mining interests of the State. Such report shall be filed with the governor on or before the thirtieth day of June next succeeding the year for which it was made, and shall be printed upon the requisition of the governor and distributed among the operators, miners and citizens of the State. (1901, c. 106, §3a; 1905, c. 46, §3; 1907, c. 78, §3; 1915, c. 10, §6; Code 1923, c. 15H, §11; 1925, c. 88, §6.)

§7. Mining Districts; Mine Inspectors; Term of Office.—The chief of the depart-

ment of mines, with the approval of the governor, shall divide the State into twenty-five mining districts, in such manner as to equalize as far as practicable the work of each inspector. The chief of the department of mines shall appoint one inspector for each mining district within the State, and three mine inspectors at large. The mine inspectors in office on the date this Code takes effect shall, unless sooner removed as provided by law, continue to serve until their terms expire and their successors have been appointed and have qualified. On or after the first day of January, nineteen hundred and thirty-four, and on or after the first day of January of each fourth year thereafter, the chief of the department of mines appointed for the term commencing on said first day of January shall appoint one inspector for each mining district within the State, and three mine inspectors at large, to serve for a term of four years commencing on said first day of January. (1887, c. 50, §§1, 2; 1890, c. 9, §§1, 2; 1893, c. 22, §1; 1897, c. 59; 1901, c. 106, §§1a, 2c, 3c; 1905, c. 46, §§2, 4; 1907, c. 78, §§2, 4; 1915, c. 10, §7; 1919, c. 32, §7; 1921, c. 118, §7; Code 1923, c. 15H, §12; 1925, c. 88, §7; 1929, c. 16.)

§8. Mine Inspector; Qualifications; Oath; Bond; Removal; Salary and Expenses.—Every person appointed to the office of mine inspector shall be a citizen of West Virginia, of good moral character and temperate habits, shall have a practical knowledge of mining and the proper ventilation and drainage of mines, and a knowledge of the gases met with in coal mines, and shall be a miner of at least six years' experience in coal mines. A diploma from any accredited school of mining engineering, or having otherwise

been engaged as an employee for six years within coal mines, shall qualify as two years' experience. He shall not while in office be interested as owner, operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of his duties he shall take the oath of office prescribed by the Constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duty, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

A mine inspector shall be removed from office by the chief of the department of mines for incompetency, neglect of duty, drunkenness, malfeasance or for other good cause.

The salaries of mine inspectors shall not be less than three thousand nor more than three thousand six hundred dollars per annum, and actual traveling expenses; such salary to be determined by the chief of the department of mines, and based on the ability and experience of the inspector: **Provided**, That before payment of such expenses shall be made to the inspector, he shall file an account of such expenses, verified by his affidavit, showing they accrued in the discharge of his official duties. (1887, c. 50, §§2, 3; 1890, c. 9, §2; 1897, c. 59; 1901, c. 106, §§1d, 2a, 2b; 1905, c. 46, §§2, 3; 1907, c. 78, §2; 1915, c. 10, §§9, 10; 1919, c. 32, §9; Code 1923, c. 15H, §12; 1925, c. 88, §§8, 9; 1929, c. 16.)

§9. Same; Inspections; Reports.—Each of the mine inspectors shall report in writing, weekly, to the chief of the department of

mines, the number and condition of all mines inspected by him during each week, and shall deliver to the operator or operators of each mine inspected a certificate of inspection, and shall post a duplicate certificate at a prominent place of the operating company where it may conveniently be read by any of the mine employees. The duplicate shall remain posted until a subsequent certificate is issued by the mine inspector. A mine inspector appointed for a particular district shall visit each mine in his district at least once in every three months, or oftener if called upon in writing by ten men engaged in any one mine, or by the owner, operator or superintendent of such mine, and make a personal examination of each working place, and also abandoned parts of the mine where gas is liberated, and outside of the mine where any danger may exist to the workmen in their respective districts, and shall particularly examine into the condition of the mine as to ventilation, drainage and general safety, and shall make a report of such examination, and he shall see that all provisions of the mining statutes are strictly carried out. It shall be unlawful for any mine inspector to appoint any deputy or other person to do and perform any work required of such inspector. (1887, c. 50, §4; 1890, c. 9, §4; 1897, c. 59; 1901, c. 106, §§1b, 3a; 1905, c. 46, §2; 1907, c. 78, §2; 1915, c. 10, §11; Code 1923, c. 15H, §12; 1925, c. 88, §10; 1929, c. 16.)

§10. Mine Rescue Car; Equipment; Use for Educational and Training Work.—The chief of the department of mines is hereby authorized, with the approval of the state board of control, to purchase, equip and operate for the use of said department a mine rescue car. Such car shall be fully equipped

with life saving apparatus and appliances suitable for use in cases of mine disaster. It shall be stationed at Charleston when not in active use, and the chief of the department of mines shall make all necessary arrangements for the haulage and operation of such car, so that the same may be hauled over the lines of any railroad and may reach the scene of any mine disaster with the utmost promptitude. Such mine rescue car may also be equipped and used, under such rules and regulations as may be prescribed by the chief of the department of mines, for educational purposes and for training in rescue work among the mine workers in this State, such as shall tend to conserve human life and property in the mining industry of this State. (1917, c. 47, §§1, 2; Code 1923, c. 15H, §§97, 98.)

§11. Mine Rescue Crews.—The chief of the state department of mines is hereby authorized to train and employ at each of the mine rescue stations, operated by that department within the State, two rescue crews of six members each. Each member of a rescue crew shall devote four hours twice each month for training purposes, and shall be available at all times to assist in rescue work at explosions and mine fires. He shall receive for his services the sum of five dollars per month, payable on requisition approved by the chief of the department of mines, and such other sums, to be paid by the operating company, as may be agreed upon when engaged in rescue work at explosions or mine fires. The chief of the department of mines may remove any member of a rescue crew at any time for neglect of duty, or failure to obey instructions. (1927, c. 23.)

§12. Director of Mine Rescue Work; Qualifications; Terms of Office; Salary.— The chief of the department of mines shall appoint, subject to the approval of the governor of the State, a director of rescue work to have charge of the operation of said mine rescue car. Such director shall be a man possessed of the same qualifications as those required for the office of chief of the department of mines, as prescribed in section three of this article; and, in addition thereto, he shall have had thorough training in mine rescue work and extended experience in the rescue work of mine disasters in this State. The term of office of the director shall be the same as the district mine inspectors. The salary of the director shall be two thousand nine hundred dollars per annum and actual traveling expenses. Such salary and expenses shall be paid monthly out of the state treasury, upon approval of the chief of the department of mines. (1917, c. 47, §3; Code 1923, c. 15H, §99; 1929, c. 89, §17.)

§13. Offences; Penalties; Jurisdiction.— Any chief of the department of mines who shall violate any of the provisions contained in section two to seven, inclusive, of this article shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred dollars, and may, in the discretion of the court, be imprisoned in the county jail not exceeding one year.

Any mine inspector who shall violate any of the provisions contained in section eight and nine of this article shall, upon conviction thereof, be fined not less than one hundred nor more than five hundred dollars, and be dismissed from office by the chief of the department of mines.

In all prosecutions under this article, the circuit court, criminal court, intermediate court having criminal jurisdiction, and justices of the peace, shall have concurrent jurisdiction, with the right of appeal. (1907, c. 78, §26; 1915, c. 10, §87; Code 1923, c. 15H, §36e (5); 1925, c. 88, §71.)

ARTICLE 2. Coal Mines.

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§1. Definitions; Scope of Article.—Mine: In this article the term "mine" shall include the shafts, slopes, drifts, or incline planes connected with excavations penetrating coal stratum or strata, which excavations are ventilated by one general air current, or divisions thereof, and connected by one general system of mine railroads over which coal may be delivered to one or more points outside the mine, when such is operated by one operator.

Excavations and Workings: The terms "excavations" and "workings" shall include all the excavated portions of the mine, those abandoned as well as the places actually being worked; also all underground workings and shafts, tunnels, and other ways and openings, and all such shafts, slopes, tunnels and other openings in the course of being sunk or driven, together with all roads, appliances, machinery and material connected with the same below the surface.

Shaft: The term "shaft" shall mean a vertical opening through the strata that is or may be used for the purpose of ventilation or drainage, or for hoisting men or material, or both, in connection with the mining of coal.

Slope: The term "slope" shall mean an incline or opening used for the same purpose as a shaft.

Operator: The term "operator" shall mean any firm, corporation, or individual operating any coal mine, or any part thereof.

Superintendent: The term "superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

Mine Foreman: The term "mine foreman" shall mean the person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

Approved Safety Lamp or Electric Lamp: The term "approved safety lamp" or "approved electric lamp" shall mean any safety lamp, or electric lamp, approved by the department of mines.

Unless otherwise expressly provided, the provisions of this article shall apply to all coal mines. (1887, c. 50, §18; 1907, c. 78, §27; 1915, c. 10, §§85, 86; Code 1923, c. 15H, §36e (4), (5); 1925, c. 88, §70.)

MINE MAPS

§2. Mine Map; Certificate of Engineer; Penalty.—The operator, or agent, of every coal mine shall make, or cause to be made, an accurate map or plan of such mine, on a scale to be stated thereon, of one hundred, two hundred or three hundred feet to the inch. Such map or plan shall show the openings or excavations, the shafts, slopes entries, airways, with darts or arrows showing directions of air currents, headings, rooms, pillars, and such portions of such mine or mines as may have been abandoned, the general inclination of the coal strata, and so much of the property lines and the outcrop of the coal seam of the tract of land on which the mine is located as may be within one thousand feet of

any part of the workings of such mine. A true copy of such map or plan shall be delivered by such operator to the inspector of his district, to be preserved among the records of his office and turned over to his successor in office; but in no case shall any copy of the same be made without the consent of the operator or his agent. The original map, or a true copy thereof, shall be kept by such operator at the office of the mine, and open at all reasonable times for the examination and use of the inspector, and such operator shall, twice within every twelve months, while the mine is in operation, cause such survey and the map thereof to be extended so as to accurately show the progress of the workings, the property lines and outcrops as above provided.

The map or maps required by this section shall have the certificate of the engineer making the same, acknowledged thereon before a notary public, or justice of the peace, in the following form:

I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the mining laws of this State, and covers the period ending

.....

.....
 Engineer.

Acknowledged before me, a
, this.....day
 of

.....

Any engineer who shall knowingly make any such map which does not correctly show the data required in this section, or knowingly make any false statement in connection therewith, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than two hundred dollars. (1883, c. 70, §3; 1887, c. 50, §5; 1901, c. 106, §5; 1907, c. §5; 1915, c. 10, §15; Code 1923, c. 15H, §13; 1925, c. 88, §11.)

§3. Failure of Operator to Furnish Map; Incorrect Map.—If the operator, or agent, of any coal mine shall neglect or fail to furnish to the mine inspector of his district a copy of the map, or extension thereof, as provided in the preceding section of this article, the mine inspector is hereby authorized to cause a correct survey and map, or plan, of said coal mine, or the extension thereof, to be made at the expense of the operator of such mine, the cost of which shall be recoverable from the operator as other debts are recoverable by law. If at any time the chief of the department of mines has reason to believe that such map, or plan, or extension thereof, furnished in pursuance of the preceding section, be materially incorrect, and will not serve the purpose for which it was intended, he may have the survey and map, or plan, or the extension thereof, made or corrected, and the expense of making such survey and map, or plan, or extension thereof, under the direction of the chief of the department of mines, shall be paid by the operator, and the same may be collected as other debts are recoverable by law; and if found correct, the expense thereof shall be paid by the State. (1883, c. 70, §3; 1887, c. 50, §5; 1907, c.

78, §6; 1915, c. 10, §16; Code 1923, c. 15H, §14; 1925, c. 88, §12.)

VENTILATION AND SAFETY MEASURES

§4. Ventilation of Mines in General; Number to Work in Same Air Current.—The operator, agent or mine foreman of every coal mine, whether worked by shaft, slope or drift, shall provide and hereafter maintain for every such mine adequate ventilation affording no less than one hundred cubic feet of air per minute for each and every person employed in such mine and as much more as the district mine inspector may require, which shall be circulated around the main headings and cross headings and working places to an extent that will dilute, render harmless and carry off the noxious and dangerous gases liberated therein. As working places advance, break throughs for air shall be made not to exceed eighty feet apart, in pillars, or line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. With the approval of the mining department greater distances than specified above may be made between break throughs. All the break throughs between the intake and return airways not required for the passage of air shall be closed with stoppings substantially built with suitable material, which shall be approved by the district mine inspector, so as to keep working places well ventilated.

No more than sixty persons shall be permitted to work in the same air current: **Provided**, That a larger number, not exceeding eighty persons, may be allowed by the district mine inspector where, in his judgment, it is impracticable to comply with the foregoing requirements.

No operator, agent or mine foreman shall permit any person to work where they are unable to maintain at least one hundred cubic feet of air per minute; but this shall not be construed to prohibit the operator from employing men to make the places of employment safe and to comply with this requirement. While the repair work necessary to get the mine in condition to comply with the law is in progress, no person or persons shall be permitted to enter that part of the mine affected except those actually employed in doing the necessary repair work. (1883, c. 70, §5; 1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §11; 1915, c. 10, §§17, 19; Code 1923, c. 15H, §15; 1925, c. 88, §13 (d), (e), (f), (g).)

§5. Ventilation of Mines Liberating Explosive Gas; Stoppings; Doors.—In all mines liberating explosive gas and where there is any reason to believe that gas will be encountered in the future workings and developments of the mine, the minimum ventilation shall be one hundred and fifty cubic feet per minute for each and every person employed therein, and as much more as one or more of the district mine inspectors may deem requisite, and all stoppings on the main entries shall be substantially built of masonry, concrete or other incombustible material, which shall be approved by the district mine inspector, so as to keep the working places well ventilated. Doors on main haulways shall be avoided in gaseous mines where practicable, and overcasts built of masonry or other incombustible material and of ample strength shall be adopted, and where doors are used they must be built in a substantial manner and hung so as to close automatically when unobstructed. (1901, c. 106, §10; 1907, c.

78, §12; 1915, c. 10, §26; Code 1923, c. 15H, §19; 1925, c. 88, §13 (i).)

§6. Fans—The ventilation of mines shall be produced by means of fans, mechanically operated, unless otherwise ordered by the chief of the department of mines. Buildings in which the ventilating fan is inclosed shall be constructed of noncombustible material, or otherwise protected from damage by fire by such safeguards as may be approved by the department of mines.

The fan (or fans) shall be kept in operation night and day, unless written permission to do otherwise be granted by the chief of the department of mines, or the district inspector in whose district the mine is located. In case of accident to a ventilating fan or its machinery whereby the ventilation of the mine is seriously interrupted, the mine foreman shall order the men to withdraw immediately from the mine, and he shall not allow them to return to their work until the ventilation has been restored and the mine has been thoroughly examined by him, or by an assistant mine foreman, or fire boss, and reported safe. (1901, c. 106, §10; 1907, c. 78, §13; 1915, c. 10, §29; Code 1923, c. 15H, §21; 1925, c. 88, §13 (a), (b).)

§7. Plan of Ventilation.—Every operator, or agent, of a coal mine, before making any new or additional openings, shall submit to the chief of the department of mines, for his information and approval, a plan showing the proposed system of ventilation and equipment of the openings with their location and relative positions to adjacent developments; and no such new or additional openings shall be made until approved by the chief of the

department of mines. (1907, c. 78, §7; 1915, c. 10, §30; Code 1923, c. 15H, §22; 1925, c. 88, §13 (c).)

§8. Rooms and Entries Driven in Advance of Air Current.—Should the mine inspector discover any room, entry, airway, or other working places, being driven in advance of the air currents contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. (1907, c. 78, §15; 1915, c. 10, §13; Code 1923, c. 15H, §12; 1925, c. 88, §13.)

§9. Unused and Abandoned Parts of Mines.—All unused working and abandoned parts of the mines must be protected by such safeguards as will prevent, so far as practicable, the accumulation or overflow of gas therein, and all avenues leading thereto shall be so arranged and conducted as to give cautionary notice to all persons of the danger in entering therein; and in order to secure the safety of the workmen in general against the danger in such unused or abandoned sections of the mine, notice shall be posted warning all persons not to enter such parts of the mine, except persons authorized to make examination of such section, and it shall be unlawful for any person, except as aforesaid, to enter such parts of said mine. (1901, c. 106, §10; 1907, c. 78, §12; 1915, c. 10, §27; Code 1923, c. 15H, §19; 1925, c. 88, §13 (j).)

§10. Petroleum and Alcohol Products Prohibited as Motive Power in Mines.—No product of petroleum, or alcohol, or any compound that in the opinion of the inspector will contaminate the air to such an extent as to be injurious to the health of the miner

shall be used as motive power in any mine. (1915, c. 10, §18; Code 1923, c. 15H, §15; 1925, c. 88, §13 (h).)

§11. Coal Dust.—In all mines, accumulations of fine, dry coal dust shall, as far as practicable, be removed from the mine, and all dry and dusty operating sections kept thoroughly watered down or rock dusted or dust allayed by such other methods as may be approved by the state department of mines. (1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §11; 1915, c. 10, §20; Code 1923, c. 15H, §15; 1925, c. 88, §14; 1929, c. 16, §14.)

§12. Telephone and Other Safety Devices.—The operator, or agent, of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom of such shaft, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; also the ordinary means of signaling, and an approved safety catch, and a sufficient cover overhead on every cage used for lowering or hoisting persons, and at the top of the shaft an approved safety gate, and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Said operator or agent shall have the machinery used for lowering or hoisting persons into or out of the mine kept in safe condition, and inspected once in each twenty-four hours by some competent person, and there shall be cut out or around the side of the hoisting shaft, or driven through the solid strata at the bottom thereof, a traveling way not less than five feet high and three feet wide to enable a per-

son to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. (1887, c. 50, §8; 1907, c. 78, §9; 1915, c. 10, §21; Code 1923, c. 15H, §16; 1925, c. 88, §15.)

§13. Engineer in Charge of Hoisting Machinery; Qualifications; Persons Permitted to Ride in Cage or Car.—No operator or agent of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer in charge of such machinery shall allow any person, except such as may be deputed for this purpose by the operator or agent, to interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his duties. In no case where the mine is operated or worked by shaft or slope shall more than ten persons ride in any cage or car at one time, without the approval of the chief of the department of mines first having been obtained, and no person shall ride on a loaded cage or car in any shaft or slope, or on any incline. (1887, c. 50, §9; 1907, c. 78, §10; 1915, c. 10, §23; 1919, c. 119, §17; Code 1923, c. 15H, §17; 1925, c. 88, §17.)

§14. Uniform Checking System.—The operator or agent of every shaft mine shall install a uniform system of checking the employees in and out of the mine, whereby each employee upon entering the mine shall be given a check by which he shall be identified, and which check shall be placed in its proper

place on the check board by the employee when leaving the mine. (1915, c. 10, §22; Code 1923, c. 15H, §16; 1925, c. 88, §16.)

§15. First Aid Equipment.—in every mine where one hundred or a less number of men are employed underground, it shall be the duty of the operator thereof to keep always on hand at the mine two properly constructed stretchers, two woolen and waterproof blankets, and all necessary requisites which may be advised by the medical practitioner employed by the company, and for each additional fifty men so employed, one additional stretcher and equipment as above specified shall be furnished. (1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §24; Code 1923, c. 15H, §17; 1925, c. 88, §18.)

§16. Safety or Electric Lamps.— Mines which liberate explosive gas from the coal or adjacent strata in dangerous quantities, and where three-fourths of one per cent is determined by air analysis, or other approved methods, on return air currents, shall, upon order of the chief of the state department of mines, be worked exclusively by the use of approved safety lamps, or approved electric lamps, and in such mine or mines no open lamp or torch shall be used except as may be permitted in writing by the said chief: **Provided, however,** That the foregoing provision requiring the use of approved safety lamps or approved electric lamps shall not be effective in mines or sections of mines where the ventilation may be increased in sufficient volume to dispel, eliminate or reduce the methane content below the percentage heretofore mentioned. In mines where flame safety lamps and approved electric lamps are re-

quired to be used for working therein, the lamps shall be in charge of some person to be designated by the mine superintendent; and at least two flame safety lamps shall be kept in reserve and ready for use at every coal mine whether such mine liberates explosive gas or not. All mine foremen and fire bosses employed in gaseous mines shall, at all times, carry an approved flame safety lamp for the purpose of detecting the presence of explosive gas, such lamp to be kept lighted at all times when in use inside the mines. (1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §14; 1915, c. §28; Code 1923, c. 15H, §20; 1925, c. 88, §20; 1929, c. 16, §20.)

§17. Mine Openings or Outlets; Roadway; Hoisting Equipment at Shaft Outlets; Limitation of Section.—It shall be unlawful for the operator, agent or mine foreman of any coal mine to employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein, unless they are in communication with at least two openings, or outlets, to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft, and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to the adoption of this Code. To each of the outlets there shall be provided from the interior of the mine a safe and available roadway, properly drained, which shall at all times, while the mine is in operation, be kept free from all obstructions that might prevent travel thereon in case of an

emergency. If either of the outlets be by shaft, it shall be fitted with safe and available appliances, such as stairs or hoisting machinery, which shall at all times, when the mine is in operation, be kept in order and ready for immediate use, whereby persons employed in the mine may readily escape in case of accident, and in addition to the regular hoisting machinery every shaft used for lowering or hoisting men shall be provided with a complete emergency windlass, or other hoisting device of ample strength for hoisting men from the mine, the same to be approved by the department of mines.

This section shall not apply to any mine while work is being prosecuted with reasonable diligence in making communication between such outlets, necessary repairs and removing obstructions, so long as not more than twenty persons are employed at any one time in the mine; neither shall it apply to any mine, or part of a mine, in which a second outlet has been rendered unavailable by reason of the final robbing of pillars, preparatory to abandonment, so long as not more than twenty persons are employed therein at any one time; but before a limited number of men are so permitted to work, approval of the necessity therefor shall first be obtained from the department of mines by the operator. (1887, c. 50, §6; 1907, c. 78, §8; 1915, c. 10, §31; Code 1923, c. 15H, §23; 1925, c. 88, §21.)

§18. Unsafe Mine; When To Be Closed; How Reopened.—The operator or agent of every coal mine shall furnish the inspector proper facilities for entering such mine and making examinations or obtaining information; and if any inspector shall discover that any mine does not, in respect to appliances

for the safety of the persons employed therein, conform to the provisions of this article, or that by reason of any defect or practice in or at such mine the lives or health of persons employed therein are endangered, he shall immediately, in writing, notify such operator or agent thereof stating in such notice the particulars in which he considers such mine to be defective or dangerous, and if he deems it necessary for the protection of the lives and health of the persons employed in such mine, he shall, after giving one day's notice in writing to the operator or agent, notify immediately the chief of the department of mines, who shall forthwith examine the mine reported to be unsafe.

If, upon such examination, the mine is in fact found to be in an unsafe condition, the chief of the department of mines shall forthwith order the mine to be closed until it is placed in safe and proper condition for mining operations. The owner or operator of any mine so closed may apply to the circuit court wherein such mine is located, or the judge thereof in vacation, by petition, for an order directing said mine to be reopened, and such court, or the judge thereof in vacation, shall immediately hear and determine the matters arising upon such petition, and if upon full hearing thereof the court, or the judge thereof in vacation, shall find that the mine is in a reasonably safe condition, the prayer of said petition shall be granted; but at least three days' notice of the hearing shall be given to the mine inspector appointed for or acting in that district and the chief of the department of mines before the hearing; and in all such hearings the attorney general shall appear for the State and defend the same. (1887, c. 50, §12; 1907, c. 78, §16; 1915, c.

10, §25; Code 1923, c. 15H, §18; 1925, c. 88, §19; 1929, c. 16, §7a.)

§19. No Act Permitted Endangering Security of Mine; Search for Intoxicants, Matches, Etc.—No miner, workman or other person shall knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lamps, or disturb any part of the machinery or appliances, open a door used for directing ventilation and not close it again, or enter any part of a mine against caution, or disobey any order given in carrying out any of the provisions of this article, or do any other act whereby the life or health of any person employed in the mine or the security of the mine is endangered.

In mines where electric or safety lamps are used no miner, workman or other person shall at any time enter any mine and carry therein any intoxicating liquors, matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved. In all such mines the operator shall, at least once each week, search or cause to be searched any person entering or about to enter any mine, to prevent such person from taking or carrying therein any of the above mentioned articles, and no person shall be permitted to enter any mine while under the influence of intoxicating liquors. (1887, c. 50, §14; 1890, c. 9, §14; 1907, c. 78, §18; 1915, c. 10, §§40, 41; Code 1923, c. 15H, §§32, 33; 1925, c. 88, §26.)

§20. Stable in Mine.—No operator, agent or mine foreman shall provide a horse or mule stable inside of any mine unless space

is excavated in solid strata of rock, slate or coal. If excavated in the coal seam, the wall shall be built of brick, stone or concrete not less than four inches in thickness, or of steel plates, and shall be built from the bottom slate to the roof. No wood or other combustible material shall be used in the construction of the inside of the stable. The air current used for the ventilation of the stable shall not be intermixed with the air current used for ventilating any other portion of the mine, but shall be conveyed directly to the return air current. No open lights shall be permitted in any stable in any mine. No hay or straw shall be taken into any mine, unless pressed or made up in compact bales, which shall be kept in a storehouse built apart from the stable, constructed in the same manner as the stable. Under no circumstances shall hay be stored in the stable. All refuse and waste shall be removed from the stable and shall not be allowed to accumulate in the mine. (1915, c. 10, §44; Code 1923, c. 15H, §36; 1925, c. 88, §29.)

§21. Steam Locomotive in Mine.—No steam locomotive shall be used in mines where men are actually employed in the extraction of coal except by the consent of the district mine inspector; but this shall not be construed to prohibit any mine owner from operating a steam locomotive through any tunnel, haulway or part of a mine that is not in actual operation and furnishing coal. (1907, c. 78, §24; 1915, c. 10, §37; Code 1923, c. 15H, §29; 1925, c. 88, §24.)

USE OF ELECTRICITY

§22. Electricity.—The operator, agent or mine foreman of any coal mine in which elec-

tricity is used as a means of power shall comply with the provisions of sections twenty-three to thirty-two, inclusive, of this article. (1915, c. 10, §47; Code 1923, c. 15H, §36b(1); 1925, c. 88, §31.)

§23. Protection Against Trolley or Power Wires.—On all haulage roads, landings and partings, where men are required regularly to work or pass under trolley or other bare power wires which are placed less than six and one-half feet above top of rail, a suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wire, which shall extend below it, or the use of other approved devices that afford protection. (1915, c. 10, §48; Code 1923, c. 15H, §36b(1); 1915, c. 88, §32.)

§24. Insulation of Machine or Feed Wires.—All machine or feed wires shall be placed on glass or porcelain insulators, which shall be so placed as to prevent the wires coming in contact with the coal. When machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between trolley wire and rib, and protected so far as practicable from contact therewith and positive feed wires crossing places where persons or animals are required to travel shall be safely guarded or protected from such persons or animals coming in contact therewith, as provided in the preceding section. (1915, c. 10, §49; Code 1923, c. 15H, §36b(1); 1925, c. 88, §33.)

§25. Location of Trolley or Feed Wires; Switches.—All trolley and positive feed wires shall be placed on opposite sides of the track from refuge holes or necks of room, when so

ordered by the department of mines, and wires may be placed across the necks of rooms when protected as provided in section twenty-three of this article. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine. (1915, c. 10, §50; Code 1923, c. 15H, §36b (1); 1925, c. 88, §34.)

§26. Power Wires and Cables in Shafts or Manway Compartments.—All power wires and cables in hoisting shafts or manway compartments shall be properly insulated, substantially fixed and well protected. (1915, c. 10, §51; Code 1923, c. 15H, §36b (1); 1925, c. 88, §35.)

§27. Electric Haulage; When Permitted.—Any mine worked by safety or approved electric lamps shall work electric haulage locomotives operated from trolley wire upon the intake airway fresh from the outside; except where permission is granted by the chief of the state department of mines, such mine may operate such locomotive on the return airways. (1915, c. 10, §52; Code 1923, c. 15H, §36b(1); 1925, c. 88, §36; 1927, c. 24; 1929, c. 16, §36.)

§28. Electric Coal-Cutting Machines; Persons in Charge Thereof; Examination.—In gaseous mines the chief of the department of mines may designate where flame proof electric coal-cutting machines shall be used. No man shall be placed in charge of a coal-cutting machine in any gaseous portion of a mine who is not a competent person, capable of determining the safety of the roof and the sides of the working places and detecting the presence of explosive gas. Machine runners shall be compelled to undergo an examination

to determine their fitness to detect explosive gas before they are permitted to have charge of machines in mines liberating gas, unless they be accompanied by a certified fire boss, or a machine runner or helper having passed such an examination. Such examination shall be given by the mine foreman, and blank forms for the same shall be furnished by the department of mines. A copy shall be retained on file at the mine office and the original sent to the department of mines, fully made out and signed by the machine runner and mine foreman. (1915, c. 10, §53; Code 1923, c. 15H, §36b(2); 1925, c. 88, §37; 1929, c. 16, §37.)

§29. Same; Limit to Use in Gaseous Portion of Mine.—In any gaseous portion of a mine, a coal-cutting machine shall not be brought within the last break through next the working face until the machine man shall have made an inspection for gas in the place where the machine is to work, unless such examination is then made by some other competent person authorized or appointed for that purpose by the mine foreman. If any explosive gas is found in the place, the machine shall not be taken in until the gas is removed. (1915, c. 10, §54; Code 1923, c. 15H, §36b(2); 1925, c. 88, §38.)

§30. Same; Detection of Fire Damp; Cessation of Work.—In working places where gas is likely to be encountered, a safety lamp or other suitable apparatus for the detection of fire damp shall be provided for use with each machine when working and should any indication of fire damp appear on the flame of the safety lamp, or other apparatus used for the detection of fire damp, the person in charge shall immediately stop the machine, cut off the current at the nearest switch, and

report the matter to the mine foreman, or fire boss, and the machine shall not again be started in such place until the mine foreman, fire boss, or a person duly authorized by either, has examined it and pronounced it safe. All coal-cutting machines shall be provided with a box specially designed for carrying and protecting safety lamps. (1915, c. 10, §55; Code 1923, c. 15H, §36b(2); 1925, c. 88, §39.)

§31. Same; Periodic Examination for Gas.—No coal-cutting machine shall be continued in operation in a gaseous portion of a mine for a longer period than half an hour without an examination as above described being made for gas, and, if gas is found, the current shall at once be switched off the machine, and the trailing cable shall forthwith be disconnected from the power supply. (1915, c. 10, §56; Code 1923, c. 15H, §32b(2); 1925, c. 88, §40.)

§32. Same; Duties of Machine Men.—Machine runners and helpers shall use care while operating mining machines. They shall not permit any person to remain near the machine while it is in operation. They shall examine the roof of the working place and see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion. (1915, c. 10, §57; Code 1923, c. 15H, §36b(2); 1925, c. 88, §41.)

USE OF OIL

§33. Oil Used in Mines.—Only animal, vegetable or paraffine oil, or other oil as free from the evolution of smoke as a standard cottonseed oil when burned in a miner's torch, shall be used in any open lamp or torch for

illuminating purpose in any coal mine in this State. Kerosene and blackstrap oil, or a mixture of kerosene and blackstrap, shall not be used in miners' troches for illuminating purposes in any coal mine in this State: **Provided**, That a mixture of mineral oil (other than blackstrap oil) and vegetable oil can be used upon machinery used as motive power to haul coal in any mine in this State, and a mixture of mineral and vegetable oil can be used for all stationary lights. (1901, c. 31, §1; Code 1923, c. 15H, §37.)

§34. Oil Tests.—A standard cottonseed oil shall have the following test: (a) It shall be free from mineral oils or mineral oil compounds; (b) It shall be tested in a glass tube one and one-half inches in diameter by eight inches deep, and the oil shall be at a temperature of sixty degrees Fahrenheit when the test is made, and shall not exceed twenty-four degrees Tagliabue hydrometer. (1901, c. 31, §2; Code 1923, c. 15H, §38.)

§35. Heating Oil for Test.—If the oil to be tested is below forty-five degrees Fahrenheit temperature, it shall be slowly heated until it reaches eighty-five degrees temperature. Should the oil be above forty-five degrees temperature and below sixty-five degrees, it shall be heated to seventy degrees, when, in either case, it must be well shaken and allowed to cool gradually to a temperature of sixty degrees, when the test shall be made. (1901, c. 31, §3; Code 1923, c. 15H, §39.)

§36. Reading of Hydrometer.—In testing the gravity of oil the hydrometer shall be, when possible, read from below, and the last

line which appears under the surface of the oil shall be regarded as the true reading. (1901, c. 31, §4; Code 1923, c. 15H, §40.)

§37. Allowance for Error.—Where the oil is tested in difficult circumstances an allowance of one-half of one degree may be made for error or parallax. (1901, c. 31, §5; Code 1923, c. 15H, §41.)

§38. Branding Oil Barrels and Containers.—All oil sold to be used for illuminating purposes in the mines of this State shall be contained in barrels, casks or packages, branded conspicuously with the name and address of the manufacturer of such oil, the specific gravity of the same and the date of shipment. (1901, c. 31, §6; Code 1923, c. 15H, §42.)

§39. Sale of Oil Not Complying with Test; Penalty.—Any person, firm or corporation, either by itself or an agent or employee, which shall sell or offer for sale for illuminating purposes in any mine in this State any oil or any mixture or compound of oils which does not comply with the tests as prescribed in section thirty-four of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars for each offense. (1901, c. 37, §7; Code 1923, c. 15H, §43.)

§40. Use of Oil Not Complying with Test; Penalty.—Any miner, or employee in any mine, or employee of any mine operator or mine owner, who shall knowingly use or permit to be used for illuminating purposes in any mine in this State any oil other than that prescribed in section thirty-three of this ar-

ticle shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than twenty-five dollars for each offense; and in default of payment of such fine within twenty days from the day of conviction, shall be given a sentence in the county jail for a period of not less than ten nor more than sixty days. (1901, c. 31, §8; Code 1923, c. 15H, §44.)

§41. Oil Tests to be Made by Mine Inspector; Penalty for Refusing to Permit Same.—It shall be the duty of the district mine inspectors, wherever they have reason to believe that oil is being used, or sold or offered for sale, in violation of any of the provisions of this article relating to oil, to take samples of the same and have them tested under the direction of the chief mine inspector, and if they are found to be inferior to the quality prescribed by such provisions, the inspector shall make complaint to the prosecuting attorney of the county in which the offense in committed, who shall forthwith commence proceedings against the offender in any court of competent jurisdiction. Any miner, mine employee, firm, corporation or their agents, who shall refuse to permit the mine inspector to examine his or their oil used or sold for illuminating purposes in the coal mines in this State shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined five dollars or imprisoned in the county jail for not more than ten days for each offense. (1901, c. 31, §9; Code 1923, c. 15H, §45.)

FIRE BOSS

§42. Fire Boss; When to be Employed; Qualifications.—It shall be the duty of every mine owner or operator in this State, whose

mines are known to liberate fire damp or other dangerous gas or gases, to employ a fire boss, or bosses, if necessary, who shall be a citizen and resident of this State, and who shall hold a certificate of competency for such position issued to him by the department of mines, after taking an examination held by the department of mines under its rules and regulations. He shall have such knowledge of fire damp and other dangerous gases as to be able to detect the same with the use of safety lamps, and shall have a practical knowledge of the subject of the ventilation of mines and the machinery and appliances used for that purpose, and shall be a person with at least three years' experience in mines liberating explosive gases. (1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §13; 1915, c. 10, §58; Code 1923, c. 15H, §36c; 1925, c. 88, §42.)

§43. Same; Duties.—It shall be the duty of the fire boss or bosses, where employed in such gaseous mines, to prepare a danger signal with red color at the mine entrance, and no person except the mine owner, operator or agent, and only then in case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss and the same or certain parts thereof reported by him to be safe. It shall further be the duty of the fire boss or bosses to go into all the working places of such mine or mines, where gas is known to exist, or liable to exist, and carefully examine the same with a safety lamp, and do, or cause to be done, whatever may be necessary to remove from such working place or places all dangerous or noxious gases, and make the same safe for persons to enter therein as workmen. Such examination and removal of the gases shall begin within

three hours before the time each shift commences work, and it shall be the duty of the fire boss at each examination to leave evidence of his presence at the face of every place examined, by plainly marking on a board at the face for that purpose the date of examination. If the mine is safe, he shall remove the danger signal at the mine entrance, or change the color thereof to safety, in order that the employee may enter such mine and begin work. (1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §13; 1915, c. 10, §59; Code 1923, c. 15H, §36c; 1925, c. 88, §43.)

§44. Same; Record of Condition of Mine.—The fire boss shall, upon having completed the examination of the mine before each shift, make a written record of the condition of the mine within a book having a form prescribed by the chief of the department of mines, which record shall at all times be kept at the mine, subject to the inspection of the district mine inspector or chief of the department of mines. (1907, c. 78, §13; 1915, c. 10, §60; Code 1923, c. 15H, §36c; 1925, c. 88, §44.)

§45. Same; No Superior Officers.—In the performance of the duties devolving upon the fire bosses they shall have no superior officers, but all the employees working inside of such mine or mines shall be subordinate to them in their particular work. (1901, c. 106, §10; 1907, c. 78, §13; 1915, c. 10, §61; Code 1923, c. 15H, §36c; 1925, c. 88, §45.)

§46. Unlawful to Enter Mine Until Fire Boss Reports It Safe; Exception; Penalty.—It shall be unlawful for any person to enter such mine or mines for any purpose at the beginning of work upon each shift therein

until such signal or warning has been given by the fire boss or bosses on the outside of the mine or mines as to the safety thereof, as by statute provided, except under the direction of the fire boss or bosses, and then for the purpose of assisting in making the mine safe. Each person who shall enter such mine, except as aforesaid, before such notice or signal has been given, or any operator, agent or fire boss who shall violate the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall suffer the penalties hereinafter provided. (1887, c. 50, §10; 1901, c. 106, §10; 1907, c. 78, §13; 1915, c. 10, §62; Code 1923, c. 15H, §36c; 1925, c. 88, §46.)

MINE FOREMAN

§47. Mine Foreman; When to be Employed; Qualifications; Assistants.—In every coal mine where five or more persons are employed in a period of twenty-four hours, the operator or agent shall employ a competent and practical inside overseer, to be called mine foreman, who shall be a citizen and resident of this State, having had at least five years' experience in the working, ventilation and drainage of coal mines, and who shall hold a certificate of competency for such position, issued to him by the department of mines, after taking an examination held by the department of mines under its rules and regulations. In mines in which the operations are so extensive that all the duties devolving upon the mine foreman can not be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated and appointed as assistants, who shall act under the mine foreman's instructions, and shall be responsible for their conduct in the discharge of

their duties under such designation or employment. (1883, c. 70, §6; 1887, c. 50, §11; 1901, c. 106, §11; 1907, c. 78, §§15, 27; 1915, c. 10, §§63, 86; Code 1923, c. 15H, §§36d(1); 35e(5); 1925, c. 88, §§47, 70.)

§48. Same; Duties; Ventilation; Loose Coal, Slate or Rock; Props; Drainage of Water.—The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that as the miners advance their excavations proper break throughs are made as required by law to properly ventilate the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines and that sufficient props, caps and timbers, as nearly as possible of suitable dimensions, are furnished for the places where they are to be used, and such props, caps and timbers shall be delivered and placed at such points as the rules for the government of each mine provides for them to be delivered. The mine foreman shall have all water drained or hauled out of the working places, where practicable, before the miners enter, and such working places kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that the cross cuts are made as required by law, and that the ventilation is conducted by means of such cross cuts through the rooms by means of check doors placed on the entries or other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. The mine foreman shall measure the air current with an anemometer at least twice each month at the inlet and outlet and at or near the faces of

the advanced headings, and shall keep a record of such measurements in a book having a form prescribed by the chief of the department of mines. Sign boards directing the way to outlets or escapeways shall be conspicuously placed throughout the mine. (1883, c. 50, §6; 1887, c. 50, §11; 1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §64; Code 1923, c. 15H, §36d(2); 1925, c. 88, §48.)

§49. Same; Refuge Holes.—The mine foreman shall require that all slopes, engine planes and haulage roads used by any persons in the mine shall be made of sufficient width to permit persons to pass moving cars with safety; or refuge holes shall be made on one side of such haulage road not less than five feet in width, nor less than four feet in depth, and on a level with the road. The refuge holes shall be not more than eighty feet apart, and shall be kept free from obstructions. The roof and sides thereof shall be made secure and kept whitewashed at all times. (1887, c. 50, §9; 1907, c. 78, §10; 1915, c. 10, §65; Code 1923, c. 15H §36d(2); 1925, c. 88, §49)

§50. Same; Signals on Haulways; Lights at Mouth and Bottom of Shaft; Operation of Cages.—On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide a proper system of signals, and a conspicuous light on the front and rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of men occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of a

stationary character sufficient to show the landing and all surrounding objects distinctly, and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which men are riding shall be lifted or lowered at a rate of speed greater than six hundred feet per minute, and that no mine cars, either empty or loaded, shall be hoisted while men are being lowered or hoisted, and no cage having an unstable self dump platform shall be used for the carrying of workmen unless the same is provided with some device by which it may be securely locked when men are being hoisted or lowered into the mine. (1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §66; Code 1923, c. 15H, §36d(2); 1925, c. 88, §50.)

§51. Same; Bore Holes.—It shall further be the duty of the mine foreman to have bore holes kept, not less than twelve feet in advance of the face, and, where necessary, on sides of the working places that are being driven toward, and in dangerous proximity to, and abandoned mine or part of mine suspected of containing inflammable gases or which is filled with water. (1887, c. 50, §11; 1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §67; Code 1923, c. 15H, §36d(2); 1925, c. 88, §51.)

§52. Same; Instruction of Employees.—It shall be the duty of the mine foreman, or the assistant mine foreman, of every coal mine in this State, to see that every person

employed to work in such mine shall, before beginning to work therein, be instructed in the particular danger incident to his work in such mine, and furnished a copy of the mining law and rules of such mine. Every inexperienced person so employed shall work under the direction of the mine foreman, his assistant, or such other experienced worker as may be designated by the mine foreman or assistant, until he is familiar with the danger incident to his work. (1907, c. 78, §8; 1915, c. 10, §68; Code 1923, c. 15H, §36d(2); 1925, c. 88 §52)

§53. Same; Daily Inspection of Working Places.—The mine foreman or his assistants shall visit and carefully examine each working place in the mine each day while the miners of such places are at work, and shall direct that each working place shall be secured by props or timbers where necessary, to the end that the working places shall be made safe. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or remove the persons working therein until the place is made safe by some competent persons designated for that purpose. (1887, c. 50, §11; 1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §69; Code 1923, c. 15H, §36d(2); 1925, c. 88, §53.)

§54. Same; Protection Against Explosive Gas; Fencing Dangerous Places.—The mine foreman shall see that every mine liberating explosive gas is kept free of standing gas in all working places and roadways. Any accumulation of explosive or noxious gases in the worked out or abandoned portions of any mine shall be removed as soon as possible after its dis-

covery, if it is practicable to remove it. All places in live sections that are temporarily abandoned shall be examined as live workings by the fire boss on regular inspections. No person who may be endangered by the presence of such explosives or noxious gases shall be allowed in that portion of the mine until such gases have been removed. The mine foreman shall direct and see that all dangerous places and the entrance or entrances to worked out and abandoned places in all mines are properly fenced off across the openings, so that no person can enter, and that danger signals are posted upon such fencing to warn persons of the existing danger. (1915, c. 10, §70; Code 1923, c. 15H, §36d(2); 1925, c. 88, §54.)

§55. Same; Ascertainment, Record and Removal of all Dangers.—The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists. He or his assistants shall, at least once each week, travel and examine all the air courses, roads and openings that give access to old workings or falls, and make a record of the condition of all places where danger has been found, with ink, in the book provided for that purpose. (1915, c. 10, §71; Code 1923, c. 15H §36d(2); 1925, c. 88, §55)

§56. Same; Duty to Notify Operator When Unable to Comply with Law; Duty of Operator; Penalty.—The mine foreman shall notify, in writing, the operator or agent of

the mine of his inability to comply with any of the requirements of these sections, and it shall then become the duty of the operator or agent to at once attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof if practicable. If any operator of a mine shall in any manner refuse to furnish all supplies necessary for the mine foreman to comply with the requirements of this article, after being requested so to do in writing by the mine foreman, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined as hereinafter provided. (1887, c. 50, §11; 1901 c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §§39, 72; Code 1923, c. 15H, §§31, 36d(2); 1925, c. 88, §56.)

§57. Same; Examination of Reports of Fire Boss.—The mine foreman shall also, each day, read carefully and countersign with ink all reports entered in the record book of the fire bosses. (1915, c. 10, §73; Code 1923, c. 15H §36d(2); 1925, c. 88 §57.)

§58. Death or Resignation of Mine Foreman; Successor.—In case of the death or resignation of a mine foreman, the superintendent or manager shall appoint a certified man, if one be available; and if not, he may temporarily appoint any other competent man who may serve with the approval of the chief of the department of mines until the next examination. He shall, while acting as mine foreman, be liable to the same penalty as the mine foreman for any violations of this article. (1915, c. 10, §74; Code 1923, c. 15H, §36d(3); 1925, c. 88, §58.)

SAFETY MEASURES BY MINERS

§59. Examination by Miner of Roof and Condition of Working Place.—Every miner shall thoroughly examine the roof and general conditions of his working place before commencing work, and if he finds loose rock or other dangerous conditions, he shall not commence work in such place until it has been made safe, or unless it be for the purpose of making such place safe. (1915, c. 10, §76; Code 1923, c. 15H, §36e(1); 1925 c. 88, §60.)

§60. Props, Timbers and Cap Pieces.—Every workman in want of props, cap pieces and timbers shall notify the mine foreman, or such other persons as may be designated for that purpose, at least one day in advance, giving the approximate length and number of props or timbers and cap pieces he requires; but in case of an emergency the timbers may be ordered immediately upon discovery of any danger, and it shall be the duty of each miner to properly prop and secure his place in order to make the same secure for him to work therein. (1887, c. 50, §11; 1901, c. 106, §11; 1907, c. 78, §15; 1915, c. 10, §77; Code 1923, c. 15H, §36e(1); 1925, c. 88, §61.)

§61. Motormen and Trip Riders; Duties.—Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion. They shall not permit any person or persons to ride on locomotives or loaded cars unless granted permission by the mine foreman. (1915, c. 10, §82; Code 1923, c. 15H, §36e(1); 1925, c. 88, §65.)

§62. Who May Ride on Mine Car.—No person, except the persons necessary to operate the trip or car, shall ride on any loaded car or on the outside of any car, or get on or off a car while in motion. (1915, c. 10, §81; Code 1923, c. 15H, §36e(1); 1925, c. 88, §64.)

EXPLOSIVES

§63. Explosives; Quantity and How Taken Into Mine.—No miner or other employee shall take into any mine in this State any larger quantity of powder or other explosive than he may reasonably expect to use in any one shift. All powder shall be carried into the mine in a metallic canister or fiber receptacle, of a capacity not to exceed five pounds, which shall be properly closed with an approved top. (1901, c. 106, §10; 1907, c. 78, §11; 1915, c. 10, §75; Code 1923, c. 15H, §36e(1); 1925, c. 88, §59.)

§64. Same; Preparation for Shots; Hauling Explosives into Mine.—In no case shall more than one kind of explosive be used in the same drill hole, and every blasting hole shall be tamped, except as is necessary to accomplish cushion blasting, full from the explosive to the mouth, and no coal dust or inflammable material shall be used for tamping. Cushion blasting shall not be allowed in any case unless written permission is granted by the department of mines. Dynamite shall not be used in blasting coal. No fuses shall be used unless permission is granted by the mine foreman, and in no case shall fuses be used of less length than the drill hole.

Where permissible explosives are used the detonators and explosives shall be kept separate; and no black powder, high ex-

plosives or detonators shall be hauled on any trip operated by electric haulage motors, unless inclosed in non-conducting boxes approved by the district inspector.

Trips hauling explosives shall not carry workmen other than those operating the trip, and explosives shall not be hauled into or out of the mine within five minutes preceding or following any trips in which men are handled; and when traveling with air current, the explosive trip shall precede; if against the air current, the man trip shall precede. (1915, c. 10, §80; Code 1923, c. 15H, 36e(1); 1925, c. 88, §63.)

§65. Same; Firing Shots.—No shots shall be fired in any place known to liberate explosive gas until such place has been properly examined by a competent person who is designated for that purpose, and no shots shall be fired in any place where gas is detected until such gas has been removed by means of ventilation. No person shall fire more than one shot at a time and after firing such shot he shall not return to the working place until the smoke has cleared away; and before starting to work he shall make a careful examination as to the condition of the roof and do what is necessary to make the place safe before beginning to load coal. (1915, c. 10, §§78, 79; Code 1923, c. 15H, §36e(1); 1925, c. 88, §62.)

§66. Solid Shooting; Permit; Offense.—In any mine in which solid shooting is done the district mine inspector is authorized to prescribe the condition under which such solid shooting may be done. Any operator or mine foreman who causes or permits any solid shooting to be done therein without first having obtained a written per-

mit from the district inspector, or any miner therein who shoots coal from the solid without first having obtained permission so to do from the operator or mine foreman, shall be guilty of a misdemeanor, and, upon conviction, shall be fined as hereinafter provided. (1907, c. 78, §23; 1915, c. 10, §36; Code 1923, c. 15H, §28; 1925, c. 88, §23.)

§67. Magazines for Storing Explosives.—All magazines used for storing powder or other explosives in greater quantities than an estimated daily supply shall be located not less than three hundred feet from any mine opening or building used or occupied by any person or persons; and the outside construction of such magazines shall be of noncombustible material. (1915, c. 10, §45; Code 1923, c. 15H §36a(1); 1925, c. 88 §30.)

ACCIDENTS

§68. Explosion or Accident; Investigation by Mine Inspector; Inquest.—Whenever, by reason of any explosion or other accident in or about any coal mine, or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and, in his absence, of the mine foreman in charge of the mine, to give notice forthwith to the chief of the department of mines and the inspector of the district, stating the particulars of such accident; and, if any one is killed thereby, to the coroner of the county also, or in his absence or inability to act, to any justice of the peace. Such inspector shall, if he deems it necessary from the facts reported, immediately go to the scene of such accident and make such suggestions and render such

assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records of his office; and to enable him to make such investigations, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The costs of such investigation shall be paid by the county in which the accident occurred in the same manner as the costs of the coroner's inquest are now paid. If the coroner or justice shall determine to hold an inquest upon the body of any person killed as aforesaid, he shall impanel a jury, no one of whom shall be directly or indirectly interested. The chief of the department of mines or the district inspector, if present at such inquest, shall have the right to appear and testify and to offer any testimony that may be relevant and to question and cross-question any witness; and the coroner or justice shall deliver to the inspector a copy of the testimony and verdict of the jury. (1887, c. 50, §15; 1907, c. 78, §20; 1915, c. 10, §43; Code 1923 c. 15H, §35; 1925, c. 88, §28.)

§69. Written Report of Accidents.—Whenever any accident occurs in or about any coal mine to any employee or person connected with the mining operation, resulting in personal injury or death, the operator or agent shall, within twenty-four hours after the happening of such accident, report the same to the chief of the department of mines and to the district mine inspector of the district in which the accident occurs, in writing, giving full details thereof upon forms prescribed and furnished by the de-

partment of mines. (1915, c. 10, §83; Code 1923, c. 15H, §36e(2); 1925, c. 88, §66.)

§70. Fire in or About Mine; Notification of Chief or District Mine Inspector.—The operator, agent or mine foreman shall, upon the discovery of fire in or about any mine, immediately notify the chief of the department of mines and the district mine inspector in whose district the mine is located. (1925, c. 88 §67.)

RULES AND REGULATIONS

§71. Permitting Work in Violation of Written Instructions of Mine Inspector.—Any operator, agent, superintendent or mine foreman, having in charge any mine, who shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by the mine inspector, made in compliance with the requirements of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined as hereinafter provided. (1907, c. 78, §22; 1915, c. 10, §35; Code 1923, c. 15H, §27; 1925, c. 88, §68.)

§72. Special Rules by Operator; Effect.—The operator of every mine in this State shall adopt special rules for the government and operation of his mine or mines, covering all the work pertaining thereto in and outside of the same, which, however, shall not be in conflict with the provisions of the mining laws of this State. Such rules, when established, shall be printed on cardboard, in the language spoken by ten or more employees, and shall be posted in the drum house, tibble or some other conspicuous place about the mines where the same may be seen and observed by all employees at such mines. When such rules

are so posted, they shall operate as a notice to all employees at such mine of their acceptance of the contents thereof. It shall be the duty of each mine operator to furnish a printed copy of such rules to each of his employees when requested by either or any of them. (1901, c. 106, §20; 1907, c. 78, §25; 1915, c. 10, §38; Code 1923, c. 15H, §30; 1925, c. 88, §25.)

WEIGHING AND MEASURING COAL

§73. Weighing and Measuring Coal; Appliances; Testing Correctness Thereof.—It shall be the duty of every corporation, company or person engaged in the business of mining and selling coal by weight or measure, to procure and constantly keep on hand, at the proper place, the necessary scales and measures and whatever else may be necessary to correctly weigh and measure the coal as mined by such corporation, company or person.

It shall be the duty of the sealer of weights and measures for every county in which coal is so mined and sold to visit each coal mine operated therein, and where such scales and measures are kept, at least once in each year, and test the correctness of such scales, and measures. The owner or operator of such coal mine, or any two or more of the miners working therein, may in writing require his attendance at the place where such scales and measures are kept, at other times, in order to test the correctness thereof, and it shall be his duty to comply with such requests as soon as he can after receiving the same.

If in any such county there be no sealer of weights and measures, the duties herein required to be done and performed by such

sealer shall be done and performed by the inspector of mines for the district of which such county forms a part. In any county in which the mine inspector is required so to act, the county court of such county shall furnish him with whatever is necessary to enable him to discharge his duties, if such court has procured the weights and measures and balances provided for by article one, chapter forty-seven of this Code; and if not, the state sealer of weights and measures shall furnish him with whatever may be necessary to enable him to discharge the duties required of him. The things so furnished him, in either case, shall be returned by him to the person from whom he received them as soon as possible after he has performed the duties for which he received them. It shall be the duty of every corporation, company or person so engaged in the business of mining coal to procure and constantly keep on hand a sealed weight of at least fifty pounds and a sealed measure of at least one bushel, to be used for the purposes herein set forth. (1891, c. 82, §§1, 5; Code 1923, c. 15H, §§47, 51.)

§74. Marking and Weighing Car Used in Hauling Coal.—Each car used by any such corporation, company or person in removing coal from any coal mine shall be numbered by consecutive numbers plainly marked, and placed and kept thereon as long as such car is so used. And if the coal from such mine is mined, and the miners are paid according to the weight thereof for mining the same, every such car so used shall be weighed upon such tested scales, and the weight thereof shall be plainly marked and placed thereon as long as such car shall be used as aforesaid. If the coal at any such mine is mined, and

the miners thereof are paid for mining the same by measure, the number of bushels of coal such car will hold when loaded to its capacity shall also be plainly marked, and placed and kept thereon as long as such car is so used as aforesaid. And no car shall be used for the purpose aforesaid until the provisions of this section are complied with. (1891, c. 82, §2; Code 1923, c. 15H, §48.)

§75. Weighing Coal in Car Before Screening; Payment for Coal.—All coal so mined and paid for by weight shall be weighed in the car in which it is removed from the mine before it is screened, and shall be paid for according to the weight so ascertained, at such price per ton as may be agreed on by such owner or operator and the miners who mined the same. And coal mined and paid for by measure shall be paid for according to the number of bushels marked upon each car in which it is removed from the mine, and before it is screened, and the price paid for each bushel so ascertained shall be such as may be agreed on as aforesaid. (1891, c. 82, §3; Code 1923, c. 15H, §49.)

§76. Weighman; Checkweighman; Employment; Oath.—Every such corporation, company or person shall employ a weighman, and the miners working in any such coal mine may employ a checkweighman as provided in section eight, article five, chapter twenty-one of this Code, and the two so employed shall supervise the weighing of each car while empty, and the weighing of the same when loaded with coal so paid for by weight, and the measuring of the number of bushels therein, when necessary, so paid for by measure. Where such check-

weighman is employed by the miners working at such mine, the corporation, company or person operating the same shall furnish such checkweighman with a check or number and pay him for all coal placed to his check or number the same per ton as is paid to the miners. If the miners fail to employ such checkweighman, then the person so employed by such corporation, company or person shall perform that duty. Each of the persons so employed, before entering upon the discharge of the duties of his employment, shall take and subscribe an oath or affirmation that he will honestly and impartially do and perform the duties of his employment, and do equal and exact justice between employers and employees interested in the matter of his employment, to the best of his judgment, skill and ability.

Where the weighman is mutually selected by the consent of a majority of the miners working in any mine and the operator or agent of said company, it shall not be considered necessary to employ a checkweighman, but at any time that either of the parties to said agreement shall become dissatisfied with said weighman, they may dismiss him on ten days' notice, or the miners may employ a checkweighman. (1891, c. 82, §4; 1901, c. 20 §§2, 4; Code 1923, c. 15H, §§50, 56, 58.)

§77. Offenses and Penalties Relative to Coal Weighing and Measuring.—Any corporation, company or person violating any of the provisions of the four next preceding sections shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for each offense, be fined not less than twenty-five

the officer, agent or employee of the corporation or company whose duty it was to do or perform the act, or cause it to be done and performed, which is the subject of the indictment, may be indicted jointly with the corporation or company, and upon conviction thereof, in the discretion of the court, he may be imprisoned in the county jail not less than ten nor more than sixty days. (1891, c. 82, §6; Code 1923, c. 15H §52.)

§78. Mines Subject to Weighing and Measuring Provisions.—None of the provisions of the five next preceding sections, except those relating to checkweighmen, shall apply to any corporation, company or person owning or operating a coal mine in which fewer than ten miners are employed. (1891, c. 82, §7; Code 1923, c. 15H, §53.)

GENERAL PROVISIONS

§79. Drainage From Mine to be Free From Pollution.—Every mine and coal washery from which water is discharged or drained into any stream, watercourse or water in this State shall be kept in a sanitary condition, and such water, while in the mine and on the premises of the mine owner or operator, shall be kept free from pollution by human or animal excrement or substance deleterious to health. The state department of health, its agents and employees, shall, at all reasonable times, have authority to enter upon the premises and into any such mine in order to see that the same is kept in a sanitary condition and that the waters draining therefrom are free from such objectionable substance; and the state department of health shall have authority to prevent any mine owner or mine

operator who fails to comply with the provisions of this section from draining or discharging water from his or its mine into any stream, watercourse or water in this State. (1915, 2nd Ex. Sess., 3. 5; 1921, c. 116, §20; Code 1923, c. 62, §20; 1929, c. 13, §69.)

§80. Intimidation of Workmen.—No person or persons, or combination of persons shall by force, threats, meanaces or intimidations of any kind, prevent or attempt to prevent from working in or about any mine any person or persons who have the lawful right to work in or about the same, and who desire so to work; but this provision shall not be so construed as to prevent any two or more persons from associating together under the name of knights of labor, or any other name they may desire, for any lawful purpose, or for using moral suasion, or lawful argument to induce any one not to work in and about any mine. (1887, c. 50, §14; 1890, c. 9, §14; 1907, c. 78 §19; 1915, c. 10, §42; Code 1923, c. 15H, §34; 1925, c. 88 §27.)

§81. Annual Report by Operator of Mine; Owner's Report in Case of Sale.—The operator or agent of every coal mine shall annually, during the month of January, mail or deliver to the chief of the department of mines a report for the preceding twelve months, ending with the thirty-first day of December. Such report shall state the names of the operators and officers of the mine, the quantity of coal mined, and such other information, not of a private nature, as may from time to time be required by the chief of the department of mines. Blank forms of such reports shall be furnished by the chief of the department of mines. When-

ever any person, company or corporation operating a coal mine shall transfer the ownership of any mine to another person, company or corporation, the person, company or corporation transferring such ownership shall, within thirty days make a report to the chief of the department of mines of such change, and a statement of the tons of coal produced since the first of January last previous to the date of such sale or transfer of such mine or mines. (1887, c. 50, §16; 1907, c. 78, §21; 1915, c. 10, §34; Code 1923, c. 15H, §26; 1925, c. 88, §22.)

§82. Offenses; Penalties; Jurisdiction.— Any inspector, person, company or corporation, or any mine superintendent, manager, engineer, mine foreman, agent or employee, who is charged with the making of maps or other data to be furnished the department of mines, as provided in sections two and three of this article, and who does not correctly show the data required, or knowingly makes any false statement or return in connection therewith, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than two hundred dollars, in the discretion of the court.

Any chief of the department of mines, any mine inspector, or any operator, mine superintendent, general manager, mine foreman, or other employee of any coal company, or any other person, who violates any of the provisions contained in sections four to eighty-one, inclusive, of this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall, unless a different penalty is expressly provided, be fined not less than ten nor more than five hundred dollars, or be imprisoned in the county jail

not less than ten days nor more than one year, in the discretion of the court.

In all prosecutions under this article, the circuit court, criminal court, intermediate court having criminal jurisdiction, and justices of the peace, shall have concurrent jurisdiction, with the right of appeal. (1907, c. 78, §26; 1915, c. 10 §87; Code 1923, c. 15H, §36e(5); 1925, c. 88, §71.)

Section 83. Each mine locomotive shall be equipped at all times with a lifting jack and handle.

ARTICLE 3. Sand and Clay Mines, Quarries and Cement Works.

Sec.

1. Inspector.
2. Mining laws applicable.

§1. Inspector.—The chief of the department of mines shall, with the consent of the governor, appoint an inspector of sand mines, sand pits, clay mines, clay pits, quarries and cement works, in addition to the district mine inspectors now provided for by law. Such inspector shall be a man who has had practical experience in the operation of sand mines, sand pits, clay mines, clay pits, crushers and quarries and in the use of explosives in sand mining and quarrying operations. Such inspector shall rank as a mine inspector, shall receive the compensation provided for mine inspectors, and shall be subject to all the requirements of sections eight and nine of article one of this chapter, except that such inspector shall not be required to have the knowledge of and experience in coal mining operations required of mine inspectors. (1917, c. 20, §1; Code 1923, c. 15H, §94.)

§2. Mining Laws Applicable.—All provisions of the mining laws of this State intended to safeguard life and property shall

extend to the operation of sand mines, sand pits, clay mines, clay pits, quarries and cement works, in so far as such laws are applicable thereto; and the chief of the department of mines shall make and enforce under said laws such rules and regulations as may be necessary to secure safe and sanitary working conditions in such sand mines, sand pits, clay mines, clay pits, quarries and cement works. (1917, c. 20 §2; Code 1923, c. 15H, §95.)

ARTICLE 4. Oil and Gas Wells.

Sec.

1. Definitions.
2. When well operator to file plat as prerequisite to drilling; contents; notice.
3. Drilling permit; agreed location of well; location fixed by department of mines; exceptions thereto; docket of proceedings.
4. Appeal by coal operator or well operator from location fixed or approved by department of mines; procedure.
5. Protective devices when well penetrates workable coal bed.
6. Protective devices when gas is found beneath or between workable coal beds.
7. Continuance of such protective devices during life of well.
8. Protective devices when well is drilled through horizon of coal bed from which coal has been removed.
9. Plugging and abandonment of well; notice of intention; affidavit showing time and manner.
10. Methods of plugging well.

11. When coal operator to file maps and plans as prerequisite to extension of coal operations; petition for leave to conduct operations within two hundred feet of well; proceedings thereon.
12. Supervision by department of mines over drilling and mining operations; complaints; hearings; appeals.
13. Rules and regulations; hearing before department of mines; appeals.
14. Preventing waste of gas.
15. Right of adjacent owner or operator to prevent such waste; recovery of cost.
16. Restraining waste.
17. Offenses; penalties.

§1. **Definitions.**—The term “well,” when used in this article, means a bore hole drilled or proposed to be drilled for the purpose of producing natural gas or petroleum, or through which natural gas or petroleum is being produced; the term “owner,” when used with reference to any such well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal; the term “well operator” shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined; the term “coal operator” shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine; the term “department” or “department of mines” includes the duly constituted

authorities under the laws of this State having jurisdiction over coal mining operations; the term "plat" means a map, drawing or print showing the location of a well or wells as herein defined; the term "casing" means a string or strings of pipe commonly placed in wells drilled for natural gas and petroleum; the terms "oil" and "gas" are synonyms for petroleum and natural gas respectively; the term "cement" means hydraulic cement properly mixed with water only; the term "workable coal bed" means a coal bed in fact being operated commercially, or which, in the judgment of the department of mines, can, and that it is reasonably to be expected will, be so operated, and which, when operated, will require protection, if wells are drilled through it. (1897, c. 58, §5; Code 1923, c. 62D, §5; 1929, c. 86, §1.)

§2. When Well Operator to File Plat as Prerequisite to Drilling; Contents; Notice.— Before drilling for oil or gas on any tract of land known to be underlaid with one or more workable beds of coal, the well operator shall have a plat prepared by a competent engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well, and shall forward by registered mail a copy of the plat to the department of mines and copies to each and every coal operator, if any, operating said beds of coal beneath said tract of land, or within five hundred feet of the

boundaries of the same, who has mapped the same and filed his maps as required by law. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered mail, pursuant to the requirements of this article. If no objections are made to such proposed location within ten days from receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location, subject to inspection at any time by any interested person. The notice above provided for may be given to the coal operator by delivering or mailing it as above to any agent or superintendent in actual charge of mines. (1929, c. 86, §2.)

§3. Drilling Permit; Agreed Location of Well; Location Fixed by Department of Mines; Exceptions Thereto; Docket of Proceedings.—In case any such location is made above or in close proximity to any mine opening or shaft, entry, traveling, air, haulage, drainage or other passage-way, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mine already surveyed and platted, but not yet being operated, so that the well or the pillar of coal about the well necessary to the protection of the mine and of the well itself when drilled will interfere with or endanger the use of such mine opening, entries or ways, then the coal operator or operators affected may, and shall, if the drilling of a well at such proposed

location will cause a dangerous condition in their mine or mines, within ten days from the receipt of such plat or notice by the department of mines, file objections in writing (forms for which will be furnished by the department on request) to such proposed location with the department of mines, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based and indicating the direction and distance from the location shown the proposed well should be drilled to overcome such objections. If no such objections be filed, or be found, by the department of mines, within said period of ten days, to such proposed location, the department shall forthwith issue to the well operator a drilling permit reciting the filing of such plat, that no objections have been made by the coal operators to the location, or found thereto by the department, and that the same is approved and the well operator authorized to proceed to drill at such location.

If any objection or objections are so filed by any coal operator or are made by the department of mines, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than ten days from the end of said ten day period, at which such objections will be considered, of which time and place the well operator and all coal operators to whom a copy of such plat was mailed, whether objecting or not objecting to the proposed location, shall be given at least five days written notice by the department, by registered mail, and summoned to appear, bringing with them their maps and plans showing

their mines and mine workings and prepared to approve or to except to such location or locations as the department may, after hearing, approve or itself fix in case no agreement is reached. At the time and place so fixed the well operator and the coal operators, or such of them as are present or represented, shall proceed to consider the objections and to agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling permit reciting the filing of said plat, that at a hearing duly held a location as shown thereon was agreed upon and approved, and that the well operator is authorized to drill at such location.

In case the well operator and the coal operator or such of the coal operators as are present or represented at such hearing are unable to agree upon a location, or upon a location that meets the approval of the department of mines, then the department shall fix a location on such tract of land as near to the original location as possible in a pillar of suitable size, through which the well can be drilled safely, taking into consideration the dangers from creep, squeeze, or other disturbance, due to the extraction of coal. Should no such pillar exist, however, the well may be locate-

and drilled through open workings where, in the judgment of the department of mines, it is practicable and safe so to do, taking into consideration the dangers from creeps, squeezes or other disturbances. Such new location shall be indicated on the plat on file with the department as provided in the next preceeding paragraph of this section, and the department shall forthwith tender to the well operator a permit to drill at such location, which permit the well operator may accept or refuse to accept, and if it accepts such drilling permit, the coal operator or operators having filed objections and appearing or being represented at such hearing, may except to such location and to the issue of such drilling permit; and the well operator accepting the same may require the record of the hearing to show that it accepts such drilling permit at the location made by the department as a new or additional location and not in lieu of its original location, and that it reserves the right to appeal to the circuit court of the county in which its original location lies for relief, and that it excepts to the refusal of the department to approve such original location substantially as made.

The department of mines shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, entering in such docket the name of the well operator, names of the coal operators notified and their addresses, the date of receipt of any such plat and of all objections filed, dates of hearings and all actions taken by the department, permits issued or refused, which docket shall be open to inspection by the public, and, together with the papers filed,

shall constitute the record of each such proceeding before the department. (1929, c. 86, §3.)

§4. Appeal by Coal Operator or Well Operator From Location Fixed or Approved by Department of Mines; Procedure.—Any coal operator excepting to any locating fixed or approved by the department of mines or to the issuance of any drilling permit, and any well operator excepting to the refusal of the department to grant a drilling permit at the location shown in the plat mailed to the department as provided in section two of this article, or such location so shifted as to be still substantially the same or the equivalent thereof, may at any time within ten days of the taking of such action by the department of mines appeal to the circuit court of the county in which the location involved lies. The procedure shall be by petition and answer, duly verified, and naming the department as one of the respondents. There shall be attached to the petition or filed therewith a transcript of the record before the department and copies of all papers filed, and the petition shall briefly set forth the matter in controversy, the ruling of the department and the relief sought. The respondents shall be required to answer under oath within ten days after service of copies of the petition upon them, and the procedure shall be expediated, as far as is reasonably possible, having regard to possible drainage or loss of title by the well operator through its failure to complete a well within the period fixed by the terms of the lease under which it holds. The court may, by preliminary order, upon proper proof of the necessity therefor and the giving of proper