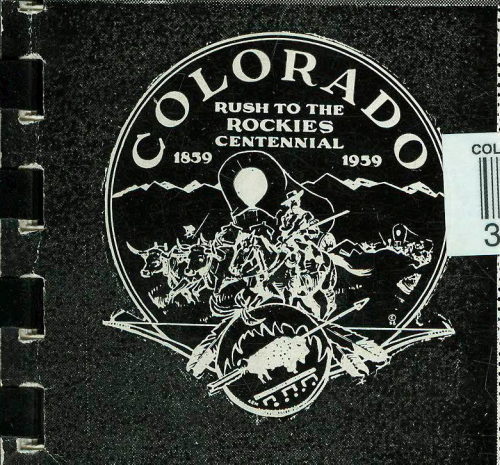
FIFTH BIENNIAL REPORT

MAY 1, 1959

GOVERNMENT DOCUMENTS
University of Colorado

INDUSTRIAL COMMISSION OF COLORADO



Fifty Years of Workmen's Compensation

THE HONORABLE STEPHEN L. R. McNICHOLS
Governor of the State of Colorado

TWENTY-FIFTH BIENNIAL REPORT

OF THE

Industrial Commission of Colorado

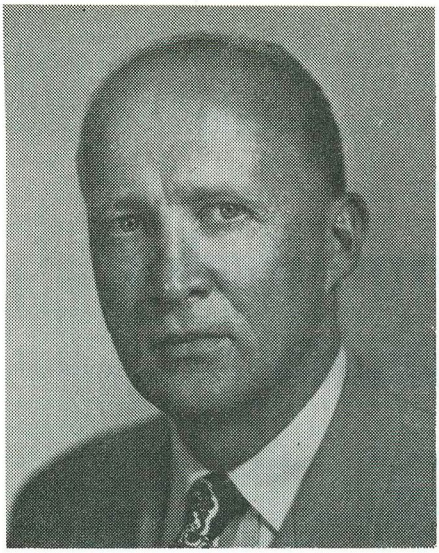
For the Period
July 1, 1956
To
June 30,1958

Administering:

- Workmen's Compensation Act
- Industrial Relations Act
- Labor Relations
- State Compensation Insurance Fund
- Factory Inspection Department
- Boiler Inspection Department
- Department of Wage Claims
- Minimum Wage
- Child Labor
- Division of Unemployment Compensation
- Private Employment Agencies
- Safety Department

WORKMEN'S COMPENSATION REACHES HALF-CENTURY MARK

Publication Approved by James A. Noonan, State Controller

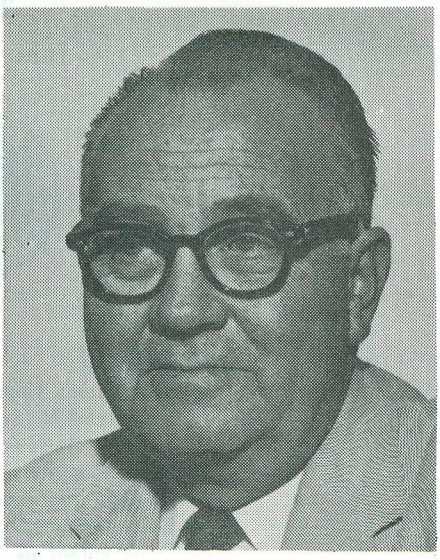


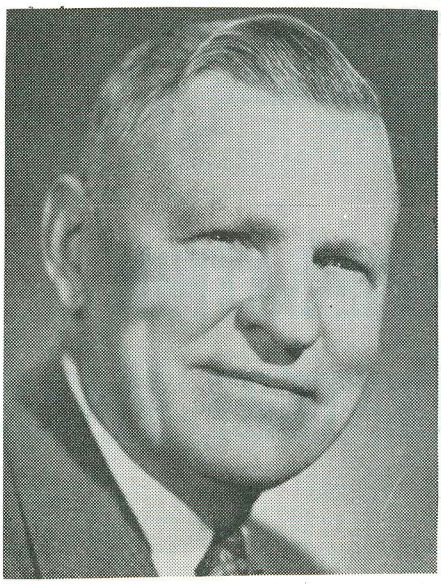
FRANK G. VAN PORTFLIET

Chairman

TRUMAN C. HALL

Commissioner





RAY H. BRANNAMAN

Commissioner

TO HIS EXCELLENCY,

THE GOVERNOR OF COLORADO

State Capitol Building,

Denver, Colorado

Sir:

In accordance with the provisions of the law creating the Industrial Commission of Colorado as modified by the Labor Peace Act, we have the honor to transmit herewith the report of the activities and proceedings of the Commission for the period of July 1, 1956, to June 30, 1958.

Frank S. VanVorhis

Chairman

Herman C. Hall

Commissioner

Ray H. Brannaman

Commissioner

TO OUR OUT OF STATE FRIENDS

YOU—

ARE CORDIALLY INVITED TO COLORADO'S "RUSH TO THE ROCKIES"

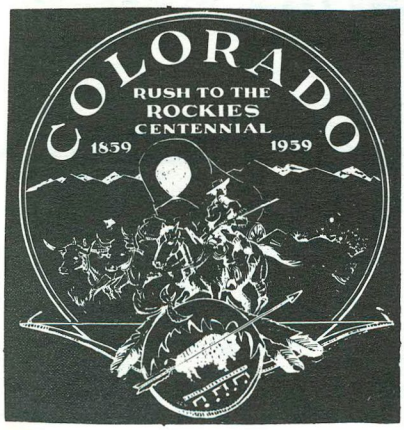
CENTENNIAL-----1859-----1959

Come and join the year-long fun in 1959, commemorating the sweep of the pioneers into the last frontier.....

Become part of a festival atmosphere---See renowned operas and plays under the stars, hear great music, with the snow-capped Rockies as a backdrop.....Stroll through authentic frontier villages, historic and scientific exhibits.....

Enjoy Colorado's superb skiing, boating, fishing, camping, horseback riding, and hunting.....Excellent Hotels and Motels.....breathtaking scenery.....fine highways.....and friendly, hospitable Western Folks.

There'll be rodeos, parades, dances, fairs, and pageants throughout Colorado.....and world SPORTS CHAMPIONSHIP competitions, when Colorado becomes the Sports Capital of the World in 1959....



For more information write to:
Colorado Centennial Commission
16th Floor, Mile High Center
Denver 2, Colorado

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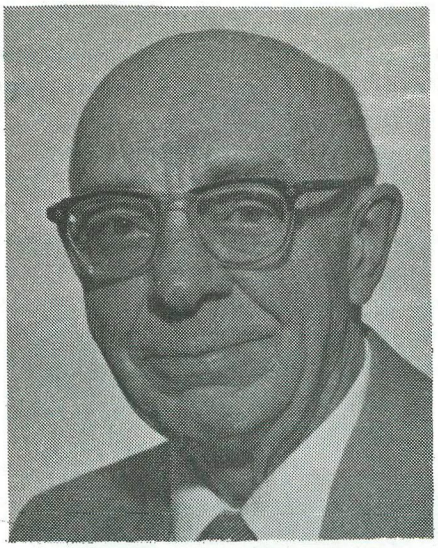
LABOR RELATIONS



MR. ROY G. LEE
LABOR MEDIATOR

The decrease in labor strife in Colorado is reflected in the increase in the mediation case load and the lower number of work stoppages. This is remarkable in a time when the number of employed has fluctuated between 600,000 and 650,000. The number of employers has also increased during the biennial period covered by this report, indicating the growing industrialization of the State.

The days lost from work as a result of the 47 lockouts and strikes were negligible compared to the number of days worked. Most such interruptions in employment involved relatively small numbers for short periods of time. Negotiation and mediation, rather than industrial warfare, is being increasingly used to straighten out differences of opinion.

WORK STOPPAGES DECLINE

One of the contributing causes in the decline in work stoppages is found in the increase of the number of elections conducted by the Commission to determine the selection or rejection of a Collective Bargaining Unit. Formerly a decision on this question was often attempted by economic combat. Now the answer is found by secret ballot of the employees themselves. Unions were selected in 55 elections and rejected in 13. The proportion of votes in each case tended to influence the settlement of disputes in the employer-employee relationship.

30 DAY COOLING OFF PERIOD

Management and Labor filed notices of an intended change in hours, wages , or working conditions in 618 incidents. These notices must be filed thirty days before the change may be effective.

This thirty day period is known as the cooling off period, Colorado was one of the first states to enact such a law (1915) and it is the consensus that it has done much to prevent ill-considered action. In 397 of these cases, strike notices were also filed affecting 4897 employers and 79,389 employees. For the most part these notices merely put the the union in a legal position to strike had it chosen to do so.

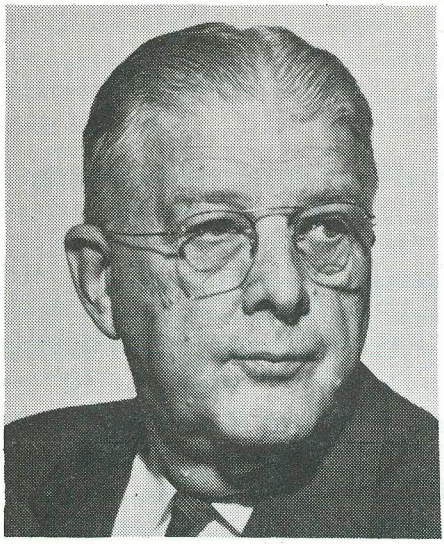
UNION SHOP ELECTIONS

Forty-four petitions to conduct Union Shop referendums were accepted and processed. The Unions involved won 35 and lost nine. The Commission accepts such petitions only when the Union has already been certified as the Collective Bargaining Unit and has met other requirements.

UNFAIR LABOR PRACTICES

The Commission issued 60 orders after investigations or hearings of cases brought before it alleging unfair labor practices or violation of one of the labor laws administered by it. Most complaints are composed by consultation or informal conference to bring about understandings. While offering services to mediate, the Commission is careful to not inject itself into disputes where it is not needed. A settlement made between the parties concerned, providing it is not in opposition to public policy, is likely to be of more permanence than one dictated. Mediation can easily become meddling when accompained by a too eager attempt to intervene. The necessity of intervention diminishes to the extent that Management and Labor recognizes the responsibilities and rights of each. But disputes will continue to arise in any free society where new economic processes, cultural advancement and technological changes require constant readjustment. The Commission appreciates the confidence which representatives of employers and of labor organizations have expressed in it.

THE SAFETY DEVICE AND METHODS DIVISION



MR. STANLEY K. RIDDELL
DIRECTOR

Colorado's position as a dominant locale in America's industrial progress was recognized infallibly during the last bi-ennial. The number of new plants erected by the nation's leading firms, and new branch offices established in the state since 1956 confirm this growing commercial stature.

Increased efforts to protect the lives of additional workers and to safeguard this maze of new equipment have been the assignment of the Safety Devices and Methods Division of the Industrial Commission of Colorado.

At the same time the Division was expanding its influence with previously established industries, the office was gaining widespread acceptance with management forces of the incoming firms. As a result, the scope of the Division's educational and safety guidance programs has assumed new proportions--in pace with the state's surging growth.

10 HOUR SAFETY COURSE ACCEPTED

Focal point of the Division's program to meet these challenges is further extension of the 10-hour safety training course for supervisors into new areas. In the past two fiscal years, a total of 1,020 students on this level participated in 55 classes conducted by trained personnel.

Typical of the caliber of firms and institutions which provided release-time for student participation are:

Great Western Sugar, Gates Rubber, Bowman Biscuit, Denver & Rio Grande Western, Ringsby Truck Lines, Glenn L. Martin Lowry Air Force Base, United Air Lines, Fitzsimons Army Hospital, Shwayder Brothers, Shell Chemical, American Smelting and Refining, Dow Chemical.

Public Service Co. of Colorado, Veterans Administration Hospital, Independent Lumber, Climax Uranium, National Lead, American Stores, Stearns-Roger Manufacturing, Mountain States Telephone & Telegraph, Stanley Aviation, Sundstrand-Denver, Denver Brick & Pipe, Wyco Pipeline, Frontier Air Lines, City of Boulder, National Bureau of Standards, University of Colorado.

St. Anthony Hospital, Fort Carson, Denver Fire Clay, American Crystal Sugar, National Alfalfa Dehydrating & Milling American Metal Products (Climax Molybdenum mines), City and County of Denver (parks and recreation division), U.S. Post Office (Denver Branch), representatives of insurance companies and labor unions.

The course met such initial success that classes have been concentrated in major metropolitan areas since its inception in 1956. Personal contacts with industry leaders during a recently completed tour of eastern and western slope cities indicate classes in the ensuing year will be extended to all borders of the state.

The Division office long has been recognized as a clearing center for information, literature and advice concerning specific safety projects. In addition to this valuable counseling service, staff members have presented talks to professional and association groups, and trade organizations. More than 700 safety film loans were made during the bi-ennial period for mass viewings by varied audiences.

SAFETY AWARDS GROW

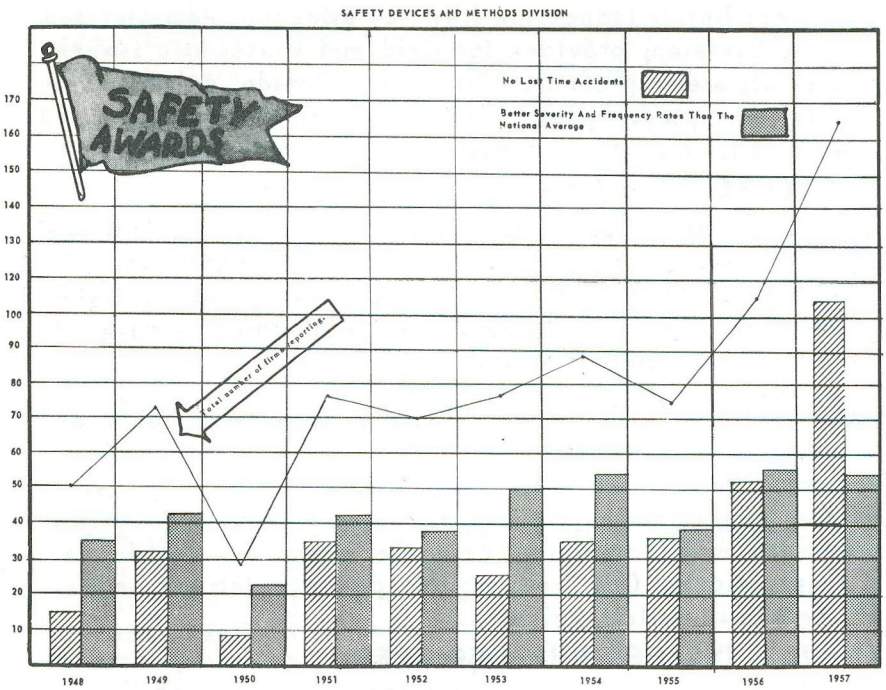
Annually, the Division distributes and checks questionnaires returned by industry to determine firm safety ratings. In 1957 a record 165 awards were presented to firms with no lost-time accidents, and to concerns with lower frequency and severity accident rates than the national average. Gov. Stephen McNichols said at the time, "it is especially noteworthy that these high ratings were achieved in a period of high production activity."

300 ATTEND ANNUAL SAFETY CONFERENCE

In January of 1958, the Division sponsored one of its most successful safety conferences in recent years. Nearly 300 safety authorities, business leaders and union officials heard up-to-date reports on hazards in construction, on and off the job traffic, chemicals and radiation. Labor's safety aims, and rehabilitation developments for injured workers also were reviewed.

RADIATION PROBLEMS TO COME

The Atomic Age has introduced new perils in radiation effects. Colorado's role in this era will become more prominent, and the Division's responsibility will increase. This is a new challenge which will require special training and facilities to guard life and property. Supplemental funds are being sought in the form of federal-grants-in-aid to establish radiation control methods.



SAFETY FOR ALL

NO COMPANY TOO BIG – NO COMPANY TOO SMALL

BOILER INSPECTION DIVISION

MRS JESSIE A. HARRIS
DIRECTOR

The State Boiler Inspection Law, as amended, administered by this Division, provides for rigid and systematic inspection of all steam pressure boilers in Colorado, unless specifically exempted, to determine if they are properly installed maintained, and safe to operate.

PROTECTS THE PUBLIC

This law was designed to protect the public against the terrific loss by property damage, and hazards to life, caused by boiler explosions. It is a vital part of the Labor Laws under the jurisdiction of the Industrial Commission, enacted in the interest of safety.

While admittedly there are boilers in Colorado which are sub-standard, the continuous program of checking boilers, enforcing requirements for repair or replacement of parts, or the condemnation of unsafe boilers, has undoubtedly prevented many disasters over the years. Colorado has been practically free from serious property damage or loss of life due to boiler explosion.

ANNUAL INSPECTIONS REQUIRED

Inspections of steam boilers in Colorado are made annually, as required by law. Boilers inspected are located in public buildings, theatres, schools, industrial plants and apartments housing four or more families. Exempt from inspection are heating boilers in private dwellings, railroad locomotives used in interstate commerce, and boilers located within the City of Denver, which has its own inspections.

BOILER INSPECTION DIVISION

RECEIPTS

July, 1956	$ 1,334.00	July, 1957	$ 1,042.00
August, 1956	1,311.00	August, 1957	1,879.00
September, 1956	1,889.50	September, 1957	1,126.00
October, 1956	1,234.50	October, 1957	1,432.00
November, 1956	1,226.50	November, 1957	1,406.50
December, 1956	1,086.50	December, 1957	1,317.50
January, 1957	1,456.50	January, 1958	967.50
February, 1957	919.00	February, 1958	1,272.00
March, 1957	1,267.00	March, 1958	1,237.50
April, 1957	1,174.00	April, 1958	1,138.50
May, 1957	1,446.00	May, 1958	1,418.00
June, 1957	1,115.00	June, 1958	796.50
	$15,459.50		$15,033.00

Total Receipts for Biennium $30,492.50

93	Boilers	$20.00	$ 1,860.00
1160	Boilers	$10.00	11,600.00
373	Boilers	$ 5.00	1,865.00
2927	Boilers	$ 2.50	7,317.50
3925	Boilers	$ 2.00	7,850.00
			$30,492.50
Interest on Registered Warrants			None
			$30,492.50

Inspections made during Biennium-- fees not yet collected:

00	Inspections	$20.00	$ None
43	Inspections	$10.00	430.00
20	Inspections	$ 5.00	100.00
42	Inspections	$ 2.50	105.00
79	Inspections	$ 2.00	158.00
			$793.00*

* Mostly current.

Inspections made without charge at State institutions, hatcheries, etc.	248
Certificates issued during biennial period	8,726
Recommendations to owners or users regarding care and maintenance of boilers or orders to correct defects	14,300
Invoices issued during biennium	8,800*
Tracers on accounts delinquent	300*
Inspections completed	8,500*
Postings on boiler data during biennium	17,000*
Inspection reports filed	8,500*

*Estimated

The State accepts insurance inspections in lieu of inspections by the State Boiler Inspectors, thus eliminating a duplicate fee.

DEPARTMENT AIDS INDUSTRY

Inspectors file written reports on all inspections with this Division. Discuss requirements with users of boilers. Witness hydrostatic tests. Inspect new installations with emphasis on setting of boilers. Make shop inspections to check reconditioned boilers before shipment to the purchaser. Make special and reinspections where boiler trouble is experienced or major repairs are under way. Determine the maximum working pressure allowed on inspected boilers. Recommend issuance of certificates of boiler inspection. May condemn boilers unfit for use. Carry on educational programs on care and maintenance of boilers.

BOILERS HAVE I. D. NUMBERS

All steam boilers in Colorado which have been inspected since 1954 are stencilled with a permanent Colorado State Serial Number assigned by this division for identification, and applied by the inspector.

Boilers not insured against boiler explosion are inspected by State Boiler Inspectors. The original staff of three inspectors was reduced to two in 1955 when one inspector resigned and was not replaced. The division urgently recommends that an additional inspector be added to the staff, due to the industrial growth of the State.

More boilers are being added each year to its inspection schedule. In 1952, there were only approximately 3500 active boilers to inspect. Currently, there are 4,771 active boilers. During the last biennial period 194 new boilers were added to the list.

INSPECTION FEES GAIN

While the total receipts for this biennial period show a slight increase over the last biennial period, this figure actually reveals a loss to the State since all inspections could not be completed. The total of $30,492.50 is an increase of $5,430.46 over the 1952-54 biennial receipts, indicating an increase in paid inspection fees.

EMPLOYMENT AGENCY DIVISION

PRIVATE EMPLOYMENT AGENCIES

The Division of Private Employment Agencies administers the law regulating Private Employment Agencies. This law provides that all such agencies shall be licensed, pay a license fee of $10.00, $25.00, or $50.00, depending upon the population of the city or town in which the agency is located, post a surety bond in the amount of $1,000 and submit references with their application for license.

This Division receives applications for licenses to operate employment agencies. Applicants are requested to confer with this Division before establishing an agency at which time the law is explained and requirements such as maintaining proper agency registries and filing monthly reports are discussed.

The law provides that the premises of the proposed agencies shall be inspected to determine if thev are suitable. Physical inspection is made where there is any doubt, particularly if the premises are not in a regular office building.

Alleged violations of the law are cleared through this division by informal hearings, correspondence, or telephone. Four hundred and seventy complaints were handled during the current biennial period. In most cases, a three-way investigation of complaints is made, by contacting the the employer, the agency, and the complainant to obtain essential facts. Sometimes, the complaint is cleared by explaining the terms of the contract with the agency and the complainant's liability thereunder. Altercations between agencies placing the same applicant are also handled informally by this division.

1891 LAW MAY BE OUT-MODED

Several attempts to have the agency law amended or a new law adopted which would meet current operating conditions have failed of passage. A test case has been heard in the Denver District Court but no decision has been rendered. This case was instituted by the District Attorney on an alleged violation of that portion of the law which limits placement fees for persons applying for work as a day laborer, mechanic, artisan or household or domestic servant to five per cent and no more on one month's wages and board, in the case of males, and in the case of females to three per cent and no more on one month's wages and board.

It was the contention of the defendant that the limitation was confiscatory, and that the State had no jurisdiction over this statute, enacted in 1891.

We have heretofore pointed out that there is a conflict between the 1891 law providing for licensing of agencies by cities, and the 1909 law providing for state licensing of agencies. A new law, which would be fair to agencies and workers alike, that would conform to modern operating conditions and provide the State with regulatory power and rule-making authority, would be helpful to this fast-growing industry and this division.

NUMBER OF AGENCIES GROWING

Statistics showing the growth of employment agencies in Colorado during recent years are shown below:

LICENSES ISSUED July 1, 1956 to July 1, 1957		RECEIPTS	LICENSES ISSUED July 1, 1957 to July 1, 1958		RECEIPTS
74	$50.00	$3,700.00	81	$50.00	$4,050.00
17	$25.00	425.00	16	$25.00	400.00
3	$10.00	30.00	6	$10.00	60.00
94	Licenses	$4,155.00	103	Licenses	$4,510.00

Total for Biennial Period, 197 Licenses	$8,665.00
Comparative fees, last biennium	- $7,410.00
Increase i n collections over last biennial period	$1,255.00

The expansion in the private employment agency business can best be illustrated by the following comparative figures:

			TOTAL FOR BIENNIUM
1942-1943	17	licenses issued	$1,800.00
1943-1944	20	licenses issued	
1950-1951	47	licenses issued	$4,485.00
1951-1952	47	licenses issued	
1956-1957	94	licenses issued	$8,665.00
1957-1958	103	licenses issued	

Note that since the 1950-52 period, the number of agency licenses has more than doubled and the amount of revenue has increased accordingly.

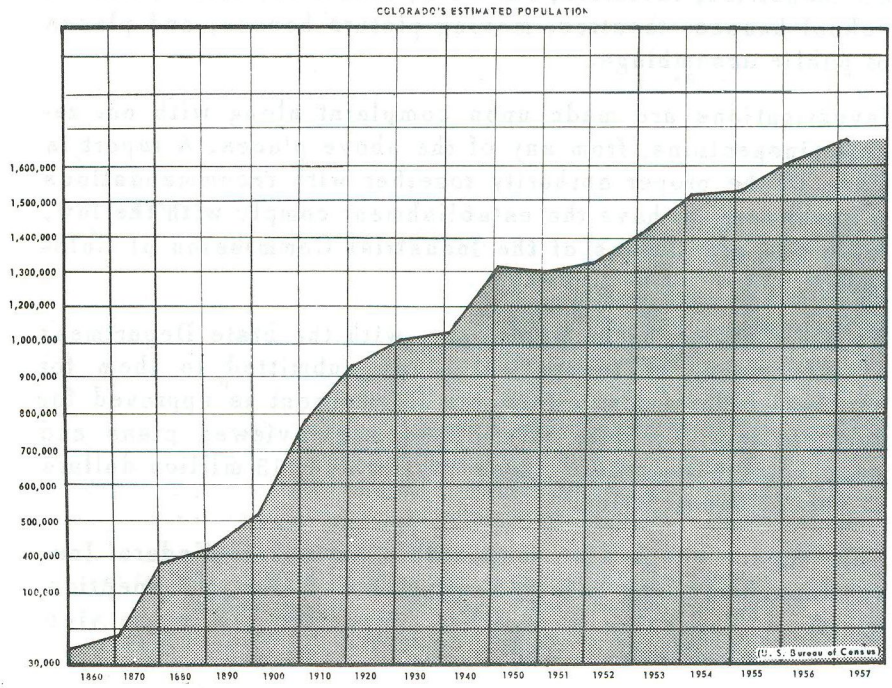
THEATRICAL EMPLOYMENT AGENCIES

The following Theatrical Employment Agency licenses were issued by the Theatrical Agency Division and license fees in the amounts shown were deposited with the State Revenue Department for credit to the General Fund and the Commission, as provided by law:

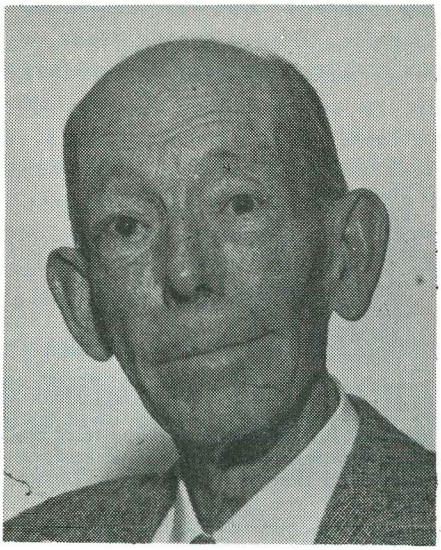
July 1, 1956 to July 1, 1957	7	Theatrical Agency Licenses $100	$700.00
	1	Theatrical Agent's License $50	$ 50.00
July 1, 1957 to July 1, 1958	8	Theatrical Agency Licenses $100	$800.00
	1	Theatrical Agent's License $50	$ 50.00
			$1,600.00-D

-D Represents Decrease. The total of $1600.00 is $200 less than the total collected during the previous biennial period. Two agencies went out of business since the report was issued. One new agency was licensed to operate in Denver.

Theatrical Agency Licenses expire at the close of the calendar year. The division finds most of these agencies cooperative in maintaining high standards, and in observing the law.



DIVISION OF SAFETY INSPECTION



MR. WM. D. BENNETTS

CHIEF

The duties of this Division are to inspect, investigate and prescribe safety devices and other means of protection in all industries, factories, bakeries, laundries, stores, hotels, school houses, theatres, moving picture houses, and places of public assemblage.

Investigations are made upon complaint along with our regular inspections, from any of the above places. A report is made to the proper authority together with recommendations if necessary, to have the establishment comply with the law, rules and regulations of the Industrial Commission of Colorado.

We are required by an agreement, with the State Department of Education, to review all plans submitted to them for approval before money from the Government is approved for construction. To date this office has reviewed plans and made corrections where necessary for over 13 million dollars in school construction.

This department is also responsible for making Federal Inspections, under the Safety, Sanitation and Health Inspection Division. These are made when inspectors are in the vicinity of such places.

This division now has four inspectors and find that it is impossible to cover the entire state as required by law. During 1957 we inspected all the counties with the exception of El Paso and Las Animas. These were completed in 1958. At

present we are four months behind schedule. This division is definitely in need of additional qualified personnel and equipment in order to keep up with the growing industry and schools of Colorado.

Added to the office work is the fact that architects throughout the state bring in their plans, especially for schools. This department reviews them before bids are let for these structures. They find it to their advantage to see that the building when completed will comply with our rules and regulations.

This department is responsible for 560,768 students and 16,245 employees in public and private schools which were inspected since the last biennial report.

During the past two years this department has received compliances from 2,912 orders, which contained 4,661 items, which were in violation of our rules and regulations. Certificates were issued showing that they had complied with the state rules and regulations.

The following is a summary of the work of this division accomplished by the Inspectors in the field.

INSPECTIONS MADE

JULY 1, 1956 to JUNE 30, 1958

Industry	Number Inspections	Number of Employees Male	Female	Total Pupils
AUTOMOBILE:				
Sales, Service, Garages	1,902	10,993	1,165	
CLAY PRODUCTS:				
Cinder Blocks	16	377	27	
Brick, Tile	37	1,255	184	
Misc. Products	63	1,319	41	
CONSTRUCTION:				
Building Contractors	31	396	21	
Plumbing Contractors & Heating	139	1,397	114	
Misc. Construction.	32	664	77	
ELECTRICAL EQUIPMENT:				
Sales & Service	109	589	252	
Manufacturers	16	1,878	357	
Misc. Electrical	60	668	169	
FOOD:				
Meat Packing & Slaughtering	80	1,762	383	
Poultry & Packing	12	134	97	
Dairy Products	136	1,885	423	
Canning-Preserving	35	924	896	
Bakery Products	150	1,055	427	
Bottled Soft Drinks	54	387	28	
Malt & Liquor	23	789	84	
Misc. Food Products	114	3,456	125	
FOUNDRY:				
Foundries with Machine Shop	14	1,187	120	
Misc. Foundries	8	504	6	
HOTELS:	592	1,392	2,158	

INSPECTIONS MADE

JULY 1, 1956 to JUNE 30, 1958

Industry	Number Inspections	Number of Employees Male	Female	Total Pupils
ICE & COLD STORAGE:	13	100	9	
IRON & STEEL PRODUCTS:				
Structural Steel Fabrications	36	819	133	
Sheet Metal Products	72	776	146	
Misc.	19	247	64	
LUMBER:				
Sawmills & Planing Mills	48	1,103	116	
Lumber Yards	383	1,936	336	
Misc. Lumber Products	190	908	116	
LAUNDRIES-CLEANING PRESSING:	520	1,119	2,626	
MACHINE SHOPS:				
Welding shops	59	257	26	
Machine shops	164	2,156	188	
Misc. Metal Mfg.	52	1,180	181	
MISCELLANEOUS MFG:	247	4,154	1,284	
PRINTING:				
Newspapers	140	1,408	513	
Photo & Lithographers	8	30	16	
Photostat & Blue Prints	1	10	0	
Misc. Printing & Publishing	142	739	699	
PUBLIC BUILDINGS:				
Court Houses	121	2,696	2,567	
Auditoriums	6	60	22	
Fair Grounds	35	7	1	
Misc. Buildings	267	2,856	523	
PUBLIC UTILITIES:				
Electric Lights, Power & Gas	256	2,436	439	
Railroad Shops	98	1,721	112	
Water Works	21	273	18	
Telephone, Telegraph	196	1,832	3,238	
STORAGE & WAREHOUSING:				
Grain Elevators	559	2,323	206	
Warehousing-Trucking	243	2,099	418	
SCHOOLS:				
Public	2,983	12,765	20,684	538,511
Private	153	344	842	18,955
STATE AND COUNTY SHOPS:	229	3,136	54	
STORES:				
Retail--				
Paint-Glass	70	304	40	
Hardware	292	1,169	334	
Appliances-Repairs	234	1,092	230	
Typewriter Exchange & Office	41	183	91	
Grocery	567	5,037	2,169	
Department	562	2,587	5,689	
Misc.	483	2,212	1,692	
STORES - WHOLESALE:	103	1,206	315	
THEATRES-AMUSEMENTS:	310	1,321	993	
GRAND TOTAL	13,620	99,164	54,468	560,768

MINIMUM WAGE, HOUR AND CHILD LABOR DIVISION

MRS. ZENADA HEYER,
DIRECTOR

EMPLOYMENT OF WOMEN AND MINORS INCREASES

This Division, which administers the laws that relate to employment of women and children, began operation in July 1937, after the 31st General Assembly amended the 1917 Minimum Wage and Labor Law for Women and Minors and appropriated funds for the work. At that time, it was known as the Minimum Wage Division and it was responsible for the administration of only the one law. In September 1942, under authority of the Administrative Code Act of 1941, the Industrial Commission transferred the administration of the Women's Eight Hour Law and the Child Labor Law to the Division. The original staff consisted of five persons-three Investigators, a stenographer-clerk, and the director, and there has been no increase in this number during the intervening years, although the work load has greatly increased. It is estimated that there are approximately three times as many women and minors employed now than were employed in 1937 and these workers are entitled to the protection afforded them by law.

MINIMUM WAGES RISE

The economic changes which the state has experienced during the past 20 years may be traced by following the development of minimum wage regulations for women and minors from the first minimum wages of 28¢ per hour (Zone B) and 32¢ per hour (Zone A), which were adopted in 1938 for the laundry industry, to the present minima ranging from

60¢ per hour to $1.00 per hour covering women and minors employed in four industries. Minimum wage rates, as well as regulations pertaining to working conditions, have been revised twice in recent years to keep pace with social and economic changes. The investigation program conducted by the Division throughout the years has provided the Commission with information concerning working conditions and the special problems relating to certain industries.

The Major functions of the Division are:

1. The enforcement of minimum wage orders issued by the Industrial Commission regulating minimum wages, maximum hours, and working conditions for women and minor employees. Four minimum wage orders are presently effective. They are listed below:

No. 10	Laundry
No. 11	Retail Trade
No. 12	Public Housekeeping
No. 13	Beauty Service

2. The enforcement of the Women's Eight Hour Law, which includes the issuance of emergency relaxation permits to allow women employees to work in excess of 8 hours per day in cases of emergency.

3. The enforcement of the Child Labor Law, including the supervision of the issuance of employment and age certificates by school superintendents throughout the state.

4. The making of cost of living and wage studies, as the need arises, and the preparation of material for the Commission to assist them in revising minimum wage orders.

The enforcement program consists of the following:

1. Investigations of complaints.
2. Routine investigations to assist in preventing violations.
3. Informal office hearings and occasional hearings before the Industrial Commission.
4. Re-inspections.
5. "Follow-up" correspondence.
6. Assisting employees with civil action when necessary.
7. Processing applications for emergency relaxation permits to allow women to work in excess of 8 hours per day.

MANAGEMENT COOPERATES

The policy of "enforcement through cooperation" has resulted in obtaining compliance without recourse to legal action in practically all cases of violation that have come

to the attention of the Division. In some cases, it has been necessary to hold conferences or administrative hearings to gain the full cooperation of the employer. When an employer refuses to make a wage adjustment, the Division has no direct means of collecting the wages due; however, claimants may file civil suit to recover the amount due and are advised by the Division how to proceed with such action. During the biennial period, court action was recommended in ten instances.

A total of 5,427 investigations were made in 87 towns and cities during this biennium. This number includes routine investigations made in Denver covering approximately one-half of the city. In addition to the investigations made, calls were made at 4,247 establishments where no women or minors were employed. A total of 27,097 women were employed in the establishments investigated. Compliance with minimum wage regulations and the Child Labor Law was checked with respect to 3,637 minors.

Investigations, this biennium, revealed a higher percentage of compliance with the regulations in general than were reported during the past two biennial periods. The regulations most frequently violated are the posting and record regulations of the wage orders and the employment certificate provision of the Child Labor Law.

The following tables give statistical information on the work accomplished:

SUMMARY OF INVESTIGATIONS, COMPLAINTS AND WAGE COLLECTIONS BY INDUSTRY

INDUSTRY	TOTAL INVESTIGATIONS	COMPLAINTS	COLLECTIONS
Retail Trade	2375	66	$ 4147.14
Public Housekeeping	2111	330	10416.78
Beauty Service	202	5	373.85
Laundry	153	11	288.65
Mfg. and Wholesale	168	11	140.15
Misc. (Child Labor)	418	25	———
Total	5427	448	$15366.57

COMPARISON OF AMOUNTS PAID TO EMPLOYEES IN BACK WAGES (FIVE (5) BIENNIAL PERIODS)

July 1, 1948	July 1, 1950	$ 5046.05
July 1, 1950	July 1, 1952	11555.59
July 1, 1952	July 1, 1954	9220.56
July 1, 1954	July 1, 1956	10252.15
July 1, 1956	July 1, 1958	15366.57
	Total	$51440.92

DISPOSITION OF COMPLAINTS

Investigations	288
Office correspondence and conferences -	85
Dropped (bankruptcy - unable to contact employer - not covered by regulations)	28
Court action recommended	12
Informal hearings	4
Industrial Commission hearings	2
Withdrawn	18
Pending	11
Total	448

THE WOMEN'S EIGHT HOUR LAW provides for a maximum eight hour day for women employees in manufacturing, mechanical, mercantile establishments, hotels, restaurants, and laundries.

EMERGENCY RELAXATION PERMITS INCREASE

In cases of emergencies, or in case of processing seasonal agricultural products, overtime may be permitted provided employees are paid time and one-half their regular hourly rate and provided the employer has first secured an emergency relaxation permit from the Industrial Commission.

The Law is difficult to enforce with respect to the permit provision since employers cannot always contact the Division prior to the occurrence of an emergency. Other changes are needed and it has been recommended that the entire law be revised.

There has been a 14% increase in the number of permits issued this biennium as compared to the number issued during the last biennium. This increase is believed to be due to an increased effort on the part of the Division in carrying out its investigation and enforcement program. More employers are becoming familiar with the provisions of the law and are endeavoring to adhere to them.

The following table gives the number of emergency relaxation permits issued this biennium as compared to those issued the last biennium.

INDUSTRY	JULY 1, 1954 to JULY 1, 1956	JULY 1, 1956 to JULY 1, 1958
Manufacturing	216	277
Mechanical	15	7
Mercantile	458	507
Hotels	58	55
Restaurants	341	417
Laundries	86	82
Total	1174	1345

EMPLOYMENT OF MINORS REGULATED

CHILD LABOR LAWS are designed to prevent employment that would interfere with the child's education, health, and general welfare. The Colorado Law applies to children under 16 years of age. It provides a minimum age of 14 years, and requires that employment certificates be kept on file in places of business where children under 16 years are employed.

Upon securing an exemption permit, children 12 and 13 years of age may be permitted to work during the months of June, July, and August, when the schools are not in session. The law does not prevent employment of children in any fruit orchard, garden, field, or farm, provided that any child under 14 years of age, who is to be employed by others than his own parents, must first secure a permit. The hours of work must be in compliance with the hours provision of the law.

MORE CHILDREN WORKING

According to the number of employment certificates issued for children during this biennium, more children were employed than during the previous biennial period. For the month of June 1958, 886 children under 16 years secured employment certificates. A comparison of the number of certificates issued during five biennial periods is shown in the following table. Each two-year period began with July 1, and ended with June 30th:

Period	Under 14 Years*	14 & 15 Years	Total
1946 - 1948	125	3270	3395
1948 - 1950	349	2585	2934
1950 - 1952	395	4774	5169
1952 - 1954	560	4714	5274
1954 - 1956	676	4447	5123
1956 - 1958	536	4689	5225

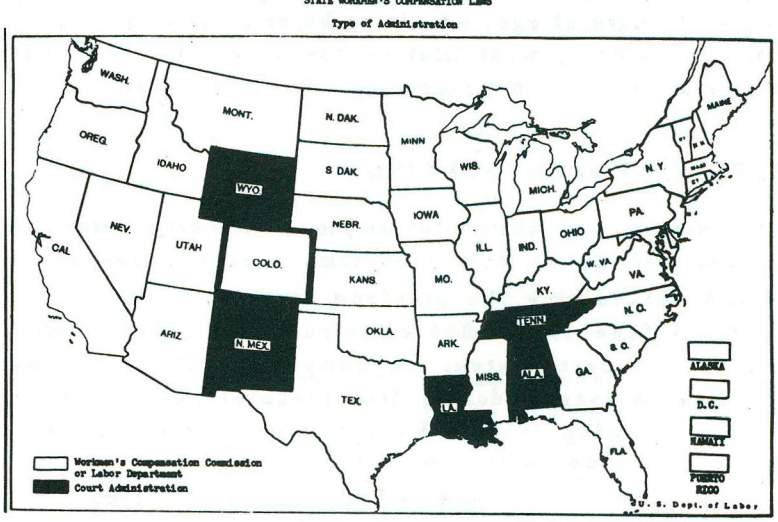
Although minors over 16 years of age are not covered by the state law, employment and age certificates are made available for those who secure employment in establishments subject to the Fair Labor Standards Act. A monthly report giving statistical information concerning employment of children covered under both the state law and Federal law is compiled from data taken from duplicate certificates that are required to be mailed to this office by the certificate issuing officers. The number of certificates issued in Denver alone as compared to those issued outside of Denver for minors under 18 years of age is given below:

	Under 14 Years*	14 & 15 Years	16 & 17 Years	Total
State, outside Denver	361	2825	1780	4966
Denver only	175	1864	757	2796
Total	536	4689	2537	7762

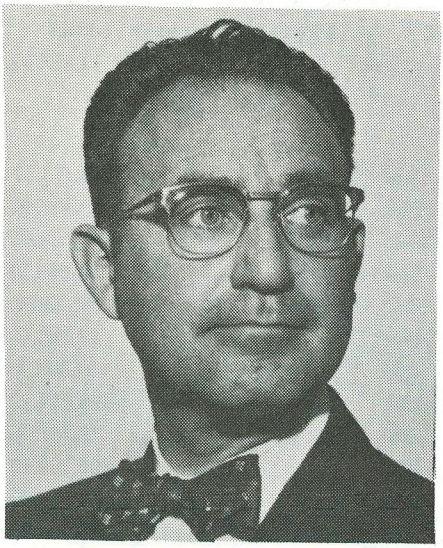
SCHOOL HEADS COOPERATE

A most cooperative program exists between school superintendents, who are responsible for issuing employment certificates, and this Division. The assistance of these school officials in the enforcement of the law is acknowledged and greatly appreciated.

* Summer and theatrical exemptions, and agricultural employment.



WAGE CLAIM DIVISION



MR. H. J. FLINK

CHIEF

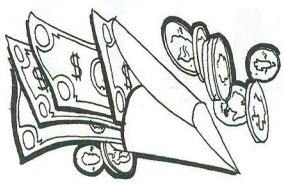
UNPAID WAGES A PROBLEM

The work of the Wage Claim Division has been materially accelerated during this biennium, as the public has been further educated to the possibility of procuring assistance from this division.

Our records indicate that for this biennial period an in- an increase of $32,771.33 has been collected and recorded by this office. Procedure is informal and may be conducted by telephone, correspondence or personal investigation.

WAGE CLAIM LAW WEAK

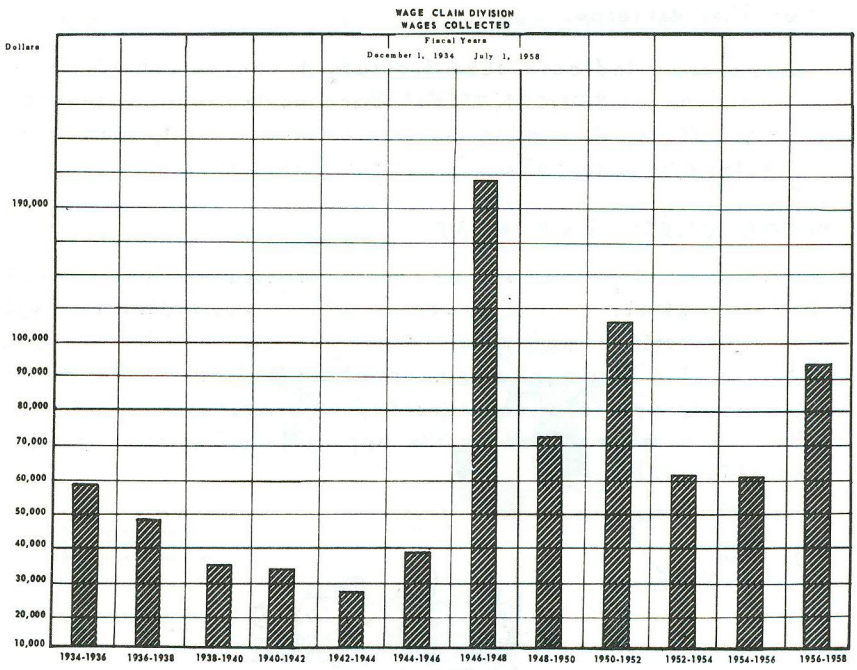
There is still a need for a more workable law which would give this division more power to enforce collection of wages due from erring employers. Since the passage by the Legislature of a new bogus or short-check law, there have been practically no violations recorded or handled by this office. The cases are handled by the appropriate District Attorney and enforced.



WAGE CLAIM DIVISION

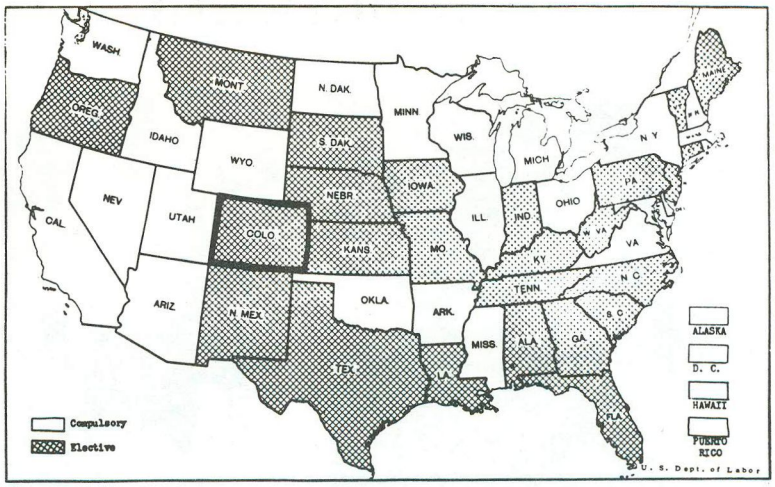
From July 1, 1956 to July 1, 1958, a total of $94,595.92 was collected and from 1933 to 1958, a grand total of $848,827.75 has been collected. The following tables give a concise resume of wages collected:

July	1,	1933	to	October 31,	1934	$ 16,175,17
December	1,	1934	to	December 1,	1936	59,167.44
December	1,	1936	to	December 1,	1938	49,518.82
December	1,	1938	to	November 1,	1939	35,045.59
December	1,	1940	to	December 1,	1942	33,328.35
December	1,	1942	to	November 1,	1944	27,780.05
December	1,	1944	to	June 1,	1946	39,863.96
July	1,	1946	to	July 1,	1948	190,841.72
July	1,	1948	to	July 1,	1950	72,731.96
July	1,	1950	to	July 1,	1952	106,109.19
July	1,	1952	to	July 1,	1954	61,844.99
July	1,	1954	to	July 1,	1956	61,824.59
July	1,	1956	to	July 1,	1958	94,595.92
				Total		$848,827.75

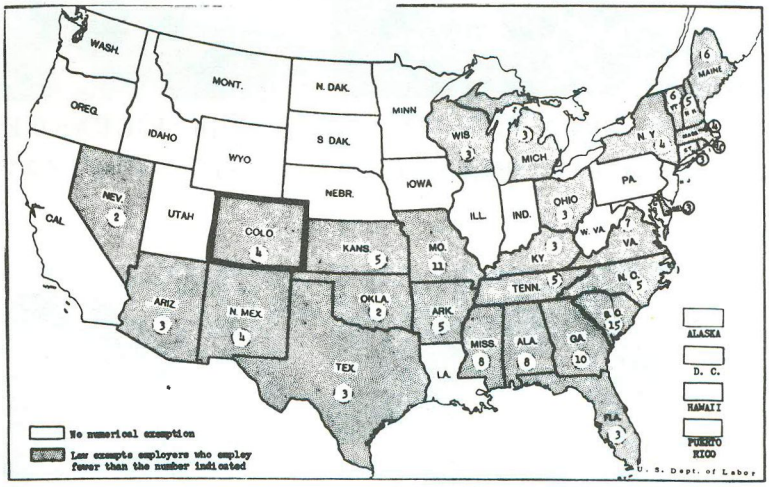


STATE WORKMEN'S COMPENSATION LAWS

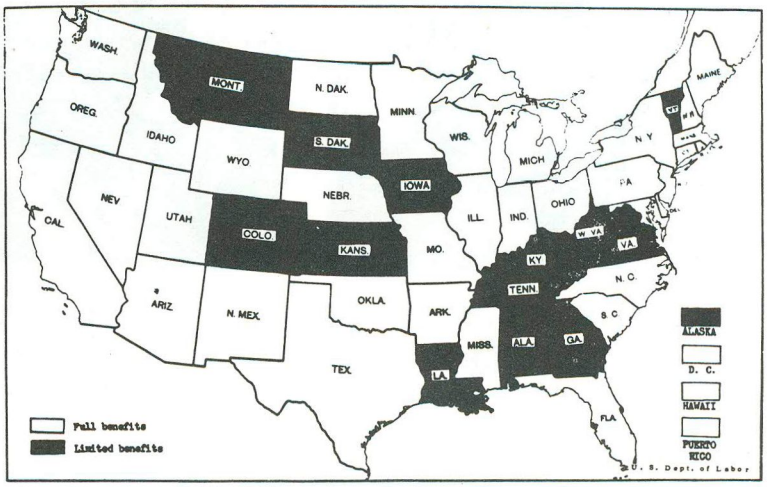
COMPULSORY AND ELECTIVE COVERAGE



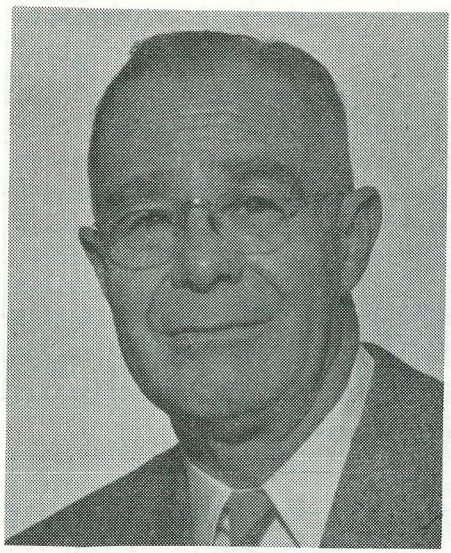
NUMERICAL EXEMPTIONS



MEDICAL BENEFITS FOR ACCIDENTAL INJURIES

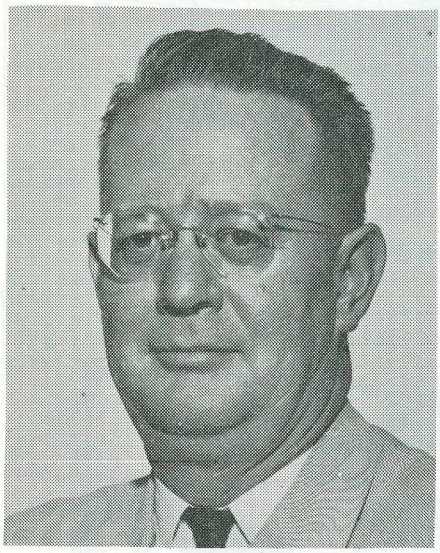


WORKMEN'S

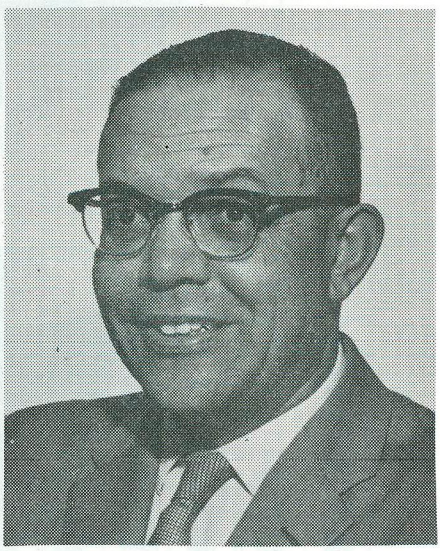


MR. FEAY B. SMITH
SECRETARY-REFEREE

MR. RICHARD E. MOSS
ASST. SECRETARY-REFEREE

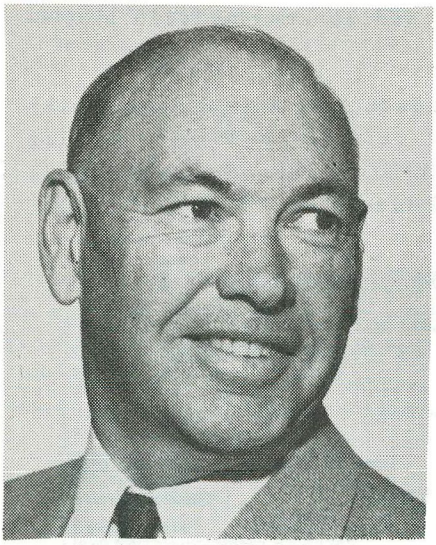


MR. THOMAS E. KELLY
REFEREE



MR. OSWALD C. ABERNETHY
REFEREE

COMPENSATION



MR. LISLE THOMAS
STATISTICIAN

MR. ALEX DEWAR, CHIEF
CLAIMS DIVISION

WORKMEN'S COMPENSATION CLAIM DIVISION

BIENNIAL INJURIES RISE FROM 112,178 FIGURE

During the biennial period covered by this report this Division received 124,208 first reports of accidential injury, and supervised the payment of 14,319 claims in which compensation benefits (as distinguished from medical benefits) were paid upon Admission of Liability filed by the carrier, and without a Hearing.

HEARINGS HELD THROUGHOUT STATE

The Referees of the Commission held hearings in Denver four, or more, days each week. Hearings were conducted in the principal industrial centers every 60 days and in towns as frequently as docket requirements and travel appropriations permitted.

During the period 3,377 compensation cases were heard, 1,515 in Denver and 1,862 elsewhere in the State.

In the same period the Referees entered 3,202 orders. The commission entered 1,465 awards, of which 647 were awards granting lump sum settlements, and 30 denying such settlements.

The Referees, in addition to conducting hearings in 3,337 compensation cases, conducted hearings and made finding of fact and recommendations in all Unfair Labor Practice Cases arising under the Labor Peace Act.

SUMMARY OF ORDERS AND AWARDS

From

AUGUST 1, 1915 to JUNE 30, 1958

	Aug. 1, 1915 to June 30, 1956		July 1, 1956 to June 30, 1958		TOTAL Aug. 1, 1915 to June 30, 1958	
Compensation:	Commis-sion	Referees	Commis-sion	Referees	Commis-sion	Referees
Fatal--Granted	1,067	3,651	--	24	1,067	3,675
Denied	271	805	--	27	271	832
Non-Fatal-Granted	3,301	28,892	7	602	3,308	29,494
Denied	947	9,026	12	677	959	9,703
Re-hearings:						
Fatal--Granted	139	105	1	--	140	105
Denied	337	53	--	--	337	53
Non-Fatal-Granted	2,277	2,492	177	5	2,454	2,497
Denied	2,166	700	86	3	2,252	703
Lump Sums:						
Fatal--Granted	1,091		49		1,140	
Denied	853		14		867	
Non-Fatal-Granted	5,225		598		5,823	
Denied	1,570		16		1,586	
Facial Disfigurement						
Granted	117	1,195	--	106	117	1,301
Denied	14	158	--	16	14	174
All other orders and awards	5,704	14,476	505	1,742	6,209	16,218
	25,079	61,553	1,465	3,202	26,544	64,755

JULY 1, 1956 to JUNE 30, 1958

COMPENSATION:	COMMISSION	REFEREE
Fatal-Granted	--	24
Denied	--	27
Non-Fatal-Granted	7	602
Denied	12	677
Hospital or Medical Expenses-Granted	2	114
Denied	5	7
Facial Disfigurement-Granted	--	106
Denied	--	16
RE-HEARINGS:		
Fatal-Granted	1	--
Denied	--	--
Non-Fatal-Granted	177	5
Denied	86	3

SUMMARY OF ORDERS AND AWARDS

COMPENSATION:	COMMISSION	REFEREE
LUMP SUMS		
Fatal-Granted	49	--
Denied	14	--
Non-Fatal-Granted	598	--
Denied	16	--
Medical Only	2	179
Orders determining dependency	5	48
Miscellaneous orders	22	80
Show Cause orders	--	186
Continuance orders	4	54
Orders vacated	6	15
Orders to pay to Subsequent Injury Fund	—	11
Cases dismissed	—	46
Orders directing Claimant to accept surgery or treatment	--	6
Orders determining extent of permanent disability	2	361
Orders reversed	7	2
Compensation reduced due to change in condition	--	8
Compensation increased due to change in condition	2	22
Orders closing cases	--	6
Orders suspended or cancelled	2	6
Orders affirmed	154	9
Orders corrected	6	35
Orders amended	8	26
Third party settlement approved	3	--
Hearings cancelled by order	2	7
Orders approving compensation or medical paid	--	30
Orders approving admissions	--	150
Orders creating trust funds	4	41
Orders granting trust fund withdrawals	215	--
Orders denying trust fund withdrawals	10	--
Orders ruling fatal cases non-compensable	—	1
Orders terminating compensation	4	8
Orders fixing termination of disability	2	137
Transcripts issued	10	—
Orders directing payment from Subsequent Injury Fund	3	--
Orders approving compromises	8	11
Orders directing carrier to offer surgery or treatment	--	13
Orders granting penalty for safety rule violation	--	4
Orders denying penalty for safety rule violation	2	8
Orders allowing attorneys' fees	10	37
Orders denying attorneys'	3	--
Orders reinstated	--	2
Orders finding no permanent disability due to accident		65
Granted penalty for failure to report	2	—
Denied penalty for failure to report	--	2
Orders determining wage rate	—	5
	1465	3202

ACCIDENT EXPERIENCE

1956 -1958

YOUNGER WORKMEN ACCIDENT PRONE

Records reveal that approximately 50% of accident fall in the 20 to 29 and 30 to 39 year age group - that is, 32,197 in the 20 to 29, and 31,355 in the 30 to 39 year range out of a total of 124,205 accidents over the two year period. In 14,249 cases, compensation was paid - 13,659 by admissions and 590 by Referee Order. Seventy cases were settled as third party cases.

AMPUTATIONS ARE STATUTORY LOSSES

As to the extent of disability, we classify 13,428 as temporary total, 513 as temporary partial, 122 facial disfigurement, 247 fatal and 41 permanent total. The remaining 3,333 are permanent partials, i.e.: 671 amputations, 1,755 loss of use of, and 907 working units. Amputations fall into the specific loss category in which the compensation is set by statute - that is, a hand amputated at the wrist pays 104 weeks, and arm at the elbow 139 weeks, and at the shoulder 208 weeks, etc. In the "loss of use of" cases, compensation is based upon the doctor's estimate of the member as a whole, so that 50% loss of use of hand at the wrist means 50% of 104 weeks.

If the claimant's loss is not specific or cannot be classed as loss of use of a specific member, such as a back or brain injury, an estimate of the disability to the body as a whole is made and compensation is paid based upon the per cent of disability, the weekly rate of compensation, and the life expectation of claimant as shown by the mortality tables.

Strains and sprains comprise 1/3 of all compensated accidents, with fractures slightly less. It is very evident that workmen should be advised by safety men in the proper way to lift and not to over-rate their strength.

FATAL ACCIDENTS

SUBSEQUENT INJURY FUND BENEFITS 11 CASES

Although there were 247 cases reported as accidental fatals 24 were heart cases in which there were either no claims filed or they were denied as not due to over-exertion but to the deceased workman's heart condition, and no accident was involved. In the remaining 223 cases, 4 were not Colorado cases, 11 were paid into the Subsequent Injury Fund, compensation was paid in 158 cases and 3 were third party settlements. Compensation was denied in 12 cases and 35 cases are pending, most of them having occurred too recently to be completely processed.

MAKE EVERY DAY
SAFETY DAY!

CONSTRUCTION INDUSTRY LEADS IN FATALS

There were 32 fatals in the mining industry, 7 in petroleum, 47 in construction, 23 in transportation, 7 in utilities, 13 in the lumber industry, 9 in agriculture, 4 in the rubber industry, and 5 in the steel industry.

Dependency has not been determined in 23 cases; there were no dependents in 14 cases; widow only in 39; widow and one child in 33; widow and two children in 42, and widow with more than two in 56 cases. There were 9 partial dependencies.

Vehicles of various kinds, principally trucks, were the accident agency in 67 cases; 23 in plane crashes, and 12 electrocutions.

COMPENSABLE ACCIDENTS CLASSIFIED BY EXTENT OF INJURY

Temporary total	13,428	Permanent partial (working unit)	907
Temporary partial	513	Permanent total	41
Permanent partial (amputation)	671	Facial	122
Permanent partial (loss of use of)	1,755	Fatal	247

COMPENSABLE ACCIDENTS CLASSIFIED BY LOCATION OF INJURY

(Not including cases in which only medical expense was paid)

Not given	48	Thumb	336
Eye	228	Fingers	1522
Ear	27	Thumb and fingers	39
Skull	72	Hand and arm	56
Scalp	33	Upper Leg	122
Brain	58	Knee	705
Head	209	Lower leg	812
Forehead	48	Ankle	684
Nose	46	Foot	926
Cheek or jaw	50	Toes	394
Teeth	6	Arm and leg	35
Throat	6	Hands and feet	9
Lips and chin	13	Foot and leg	25
Neck	105	Coccyx	45
Face	192	Pelvis	76
Vertebrae	187	Heart	48
Spine	334	Lungs	67
Back	2154	Other internal organs	78
Ribs or side	488	Abdomen, external	64
Sacrum	163	Anus, rectum	12
Hip	221	External generative organs	38
Chest	121	Hernia	872
Sternum	7	Trunk, body, general	187
Shoulder	413	Blood	39
Collar bone	33	Arteries and veins	11
Elbow	170	Skin	13
Arm	502	Groin (not hernia)	76
Wrist	427	Nervous system	11
Hand	656		14,319

COMPENSABLE ACCIDENTS CLASSIFIED BY NATURE OF INJURY

(Not including cases in which only medical was paid)

Unclassified	761	Dislocation	200
Amputation and enucleation	574	Foreign object	140
Asphyxiation, including drowning	28	Fractures	3226
Shock, electrical	28	Hemorrhage	3
Shock, other than electrical	5	Infection	44
Loss of consciousness from heat	5	Poisoning	13
Loss of consciousness from blow	1	Laceration	1562
Loss of consciousness from heart attack	34	Puncture	144
Burns	523	Rupture (not hernia)	43
Frozen	4	Sprain	980
Irritation	41	Strain	3799
Contusion	1611	Occupational	99
Exhaustion	4	Internal	52
Concussion	66		
Crushing	329		
			14,319

ANALYSIS OF INDUSTRIAL ACCIDENTS

July 1, 1956 to June 30, 1958

BY AGE GROUPS	ALL ACCIDENTS	
Under 20 Years	5,686	4.58%
20-29 "	32,197	25.92%
30-39 "	31,355	25.25%
40-49 "	24,442	19.68%
50-59 "	13,882	11.18%
60-69 "	4,783	3.85%
70-79 "	550	.44%
80-89 "	21	.01%
Not given	11,289	9.09%
	124,205	100.00%

BY CARRIER	NUMBER OF ACCIDENTS
Stock Companies	35,295
Mutual Companies	10,028
Reciprocal Companies	231
State Fund	70,577
Self-Insurers	7,867
Non-Insurers	207
	124,205

COMPENSABLE ACCIDENTS CLASSIFIED BY TYPE OF ACCIDENT

(Not including cases in which only medical expense was paid)

Burns, shock, poisoning, etc.	711
Occupational	111
Falls on same level	1,179
Falls on different level	1,429
Slip	826
Struck by	3,443
Caught in, under or between	2,043
Struck against	1,174
Strain by pushing, pulling, lifting	3,372
Other or not specified	31
	14,319

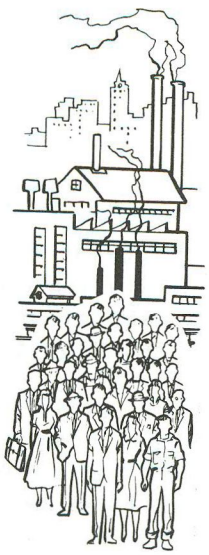
ANALYSIS OF ACCIDENTS BY INDUSTRY

Agriculture and livestock	1,381
Agricultural services	547
Forestry and fishing	10
Metal Mining	6,023
Coal Mining	1,932
Petroleum Production	2,100
Quarrying	768
General Construction	9,164
Heavy construction roads, dams, etc.	4,815
Special construction, trades (plumbing, painting, etc.)	10,884
Motor Vehicles and equipment (Trailers)	2,520
Miscellaneous manufacturing industries	659
Street car, bus and railroad transportation	61
Trucking and warehousing	4,478
Taxi and interurban busses	286
Transportation services	242
Communications	545
Utilities (electric and gas)	1,488
Air transportation	584
Food and beverage processing and Mfg.	4,946
Packing House	3,522
Grain and feed mills	522
Apparel and textile manufacturing	380
Lumber production, timber products	2,300
Furniture and finished wood products (mill work,etc.)	914
Paper and paper products	347
Printing and publishing	1,059
Chemical and allied products	932
Petroleum refining	439
Rubber products	1,344
Leather products	242
Stone, glass, clay and allied products	2,441
Iron and steel and their products	4,479
Transportation equipment	983
Non-ferrous metal products	2,051
Electrical machinery manufacturing	603
Other manufacturing of machinery	3,252
Automotive repair service, parking lots, etc.	5,146
Miscellaneous repair and hand trades	1,160
Motion picture productions and shows	133
Amusements	710
Medical and health services	2,522
Education, including libraries and museums	3,027
Professional, religious and charitable services	693
Labor,fraternal, political and trade associations	491
Pipeline transportation	42
Water, sanitary and irrigation systems.	218
Wholesale trade	5,671
Lumber and building materials dealers.	1,619
Retail general merchandise	2,244
Retail food and liquor stores	3,334
Retail automotive	451
Retail apparel	267
Retail miscellaneous (drugs, hardware, etc.)	1,796
Eating and drinking places	2,668
Retail filling stations	555
Banks, real estate, insurance, etc.	851
Hotels, camps, rooming houses	1,456
Personal services, laundries, cleaning and dyeing, barber and beauty shops, etc.	824
Business services- advertising, auditing, radio broadcasting, cleaning and other office and building services.	459
Employment services, vocational schools	16
Private households	36
Public agencies, including police and fire, highway and sanitation, military, correctional, judicial and legislative departments.	3,018
Public agencies, including administrative engineering, health, taxing, municipal utilities and recreational	5,555
Total	124,205

COMPENSABLE ACCIDENTS CLASSIFIED BY CAUSATIVE AGENCY

(Not including cases in which only medical expense was paid)

Machines	1,419
Hand tools	797
Acids, gases, chemicals and poisoning substances, gases, chemicals, molten and hot metal and other substances causing burns...	
Dusts, live wires and electrical equipment.	656
Lead poison.	
Working surfaces	2,838
Vehicles	1,586
Animals, insects, etc.	194
Condition-not material objects	108
All other agencies	6,358
Elevators, hoists, conveyors	363
	14,319



TRUST FUND ACCOUNTS

The Workmen's Compensation Act provides that upon remarriage of the dependent widow her right to compensation shall terminate and if there be other dependents shall survive to them.

This Commission has always believed that one of its most important functions is the protection of the rights of surviving minor dependents in such cases.

Experience has demonstrated the funds conserved for minor dependents, following remarriage of the mother, are later, all too often the only resource from which clothing, essential medical expense, and educational requirements can be provided.

Customarily the Commission orders all or part of the money of the monthly payments deposited in trust for the benefit of the surviving minor dependents depending on the situation.

TRUST FUNDS FOR MINORS INCREASE

On July 1, 1958, there were 503 trust accounts totaling $654,668.60, an increase of 84 accounts and $156,574.92 in the total trust fund account during the past biennium.

Moneys so deposited in trust can be released only upon the the written order of the Commission. These trust fund accounts are available to pay for medical or dental attention; school expenses or other contingencies in which it is to the best interest of the minor to provide funds to meet current emergencies or requirements.

No charge is made for handling these accounts and the funds so deposited draw interest at 3% compounded quartly.

SUBSEQUENT INJURY FUND

The Subsequent Injury Fund was established in 1945, by legislation which provided that in each fatal case in which the decedent left no dependents the insurance carrier should pay into the Fund $500.00.

The section provides that the Fund so established shall be used to pay compensation to injured employees who have previously lost a major member or the vision of an eye, and in a second accident sustain a similar disablement.

In such case the insurance carrier pays the normal compensation for the loss of the second member, and when that

payment is completed the claimant is thereafter paid compensation at the established weekly rate as is a permanent total disability case - that is, so long as he shall live.

In 1945 the weekly rate was $14.00 per week. In 1947 the weekly rate was increased to $17.50, in 1949 to $22.75, in 1951 to $28.00, in 1953 to $29.75, and in 1955 to $31.50. Not until 1955 were the payments to the Subsequent Injury Fund increased, and then to $1250.00 for each fatal case. In 1957 weekly benefits were again increased to $36.75, but no increased payment to the Fund was provided.

Five claimants are now drawing payments from the Subsequent Injury Fund. One additional claimant becomes eligible for payment August 15, 1959, and one February 16,1960.

Estimated Financial Condition of Fund

(Based on most favorable assumption that no new cases are charged to the Fund, and that payments to the Fund continue at approximately $12,500.00 per year)

Paid into Fund from inception to June 30, 1958	$98,750.00
Paid out to claimants, from inception to June 30, 1958	32,006.54
Cash Balance June 30, 1958	$66,743.46
Estimated payments to Fund to January 31,1960	21,250.00
Estimated balance to January 31, 1960	$87,993.46

Reserve to carry cases to Conclusion
(Based on 1958 Life Expectancies)

5 active accounts

5	active accounts	$132,065.85
1	account, payments begin August 15, 1959	25,831.26
1	account, payments begin February 10, 1960	40,838.07
		$198,735.18
	Less estimated balance January 31, 1960	87,993.46
	Estimated deficit January 31, 1960	$110,731.72

To reduce the hazard of the increasing deficit of this Fund and to place it on a continuing solvent basis, the Compensation Act should be amended to provide increasing payments to the Fund.

In view of the past failures to increase a flat amount with each weekly increase in compensation payments, it is believed that the Act should provide for payment of a percentage of the maximum payable in a death case, rather than a flat sum.

OCCUPATIONAL DISEASE DISABILITY CASES

From July 1, 1956 to July 1, 1958, 541 cases were reported under the Occupational Disease Disability Act. Of these 381 were due to dermatitis, 39 to lead poisoning, 30 to silicosis, 47 to miscellaneous agencies including carbon monoxide and various fumes and dusts (causing asphyxiation, nasal and lung irritations and infections); 4 cases of allergies: 1. face swollen from paint fumes; 2. eye infection from contacting birds in a retail store; 3. nausea from chemical fumes; twelve cases of bursitis; one case of radiation poisoning in a chemical plant; five cases of eye infection (not allergy); one eye infection was caused by ultra-violet radiation; one radiation poisoning in metal mining, affecting the lungs, causing death; 8 cases of synovitis and tenosynovitis; one toxic poisoning for which claimant received $173.25 for temporary total disability; one blood poisoning from aerial spray (parathione); 5 hepatitis cases; one cellulitis case; one bacterial infection; one kidney infection; one case of asbestosis; one stomach ulcer; and one tuberculosis case. The last was non-compensible under the O.D.Act; exposure to dust and wet conditions caused the disease.

In 92 cases compensation benefits for temporary total or permanent disability were paid in addition to medical only benefits. Ten per cent were denied; sixty-two per cent given medical only; sixteen per cent given temporary or permanent benefits; 12 per cent still pending.

Common agencies causing disability: chemical, detergents oils, dust, fumes, lead, paint, acids and solvents, cement viruses and strain in working.

Industries producing the largest number of occupational diseases: steel manufacturing 7 per cent; aviation components 7 per cent; metal mining 6 per cent; machinery manufacturing 5½ per cent; restaruants 5 per cent; heavy construction 3 per cent; battery manufacturing 3 per cent; hospitals 5 per cent; special construction 2½ per cent; chemical plants 2½ per cent; automobile repair 2½ per cent; luggage manufacturing 2 per cent; electric motors manufacturing 1½ per cent; printing trades 1½ per cent. The remainder occurred in many other industries, including lumbering, paper products, air lines, grain mills, coal mining, fire clay manufacturing, photography, crop spraying, rubber manufacturing, paint manufacturing.

Age Distribution of O. D. Cases:

	July 1, 1956 to July 1, 1957 Percentage	July 1, 1957 to July 1, 1958 Percentage
Teen Age Group	5	4
20 - 29 Years	24½	19
30 - 39 "	23	23½
40 - 49 "	23½	27½
50 - 59 "	17	19
60 - 69 "	6½	6½
70 - 79 "	½	½

Thirty-eight cases of lead poisoning were reported; one-fourth were given temporary compensation, one-half medical only; two cases denied, four cases pending. Fifteen lead poisoning cases were contracted in battery manufacturing the remainder in smelting, foundries, automobile repair shops, printing, road construction, steel fabrication.

Thirty cases of silicosis were reported during the two year period. Industries in which the silicosis affected workers were employed: metal mining 17; fire brick manufacturing 5; steel mills 3; foundries 2; coal mining 1; vermiculite and and perlite plants 1; county road work 1.

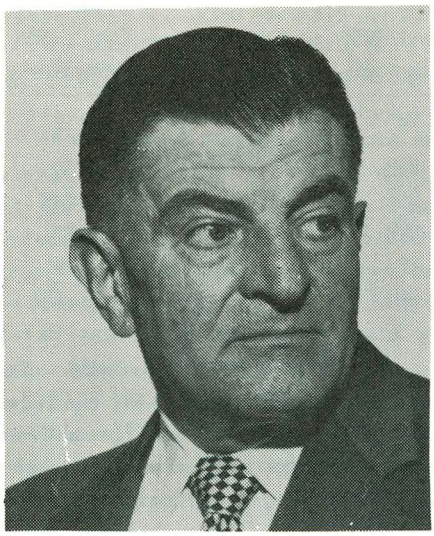
Of the thirty cases,

- 4 were granted permanent total compensation in the amount of $29,600;
- 1 fatal was granted $7000.00;
- 14 were denied or dismissed for the following reasons: (not permanently and totally disabled; disability or death not due to silicosis; failure to establish proof; late filing; not enough silicate found in plant where claimant worked to cause the disease);
- 5 cases are still pending;
- 5 did not file claims;
- 1 claimant signed waiver.

Of the four cases of silicosis granted permanent total compensation, two were in metal mining, one in fire clay manufacturing, one in brick laying in a steel plant. The fatal case occurred in metal mining.

Six occupational disease fatals occurred in this period; five silicosis cases, and one radioactive case in metal mining, affecting the lungs. One fatal silicosis case was granted; two are pending; two have been denied; heart condition caused the death of one; the other case was filed too late. The radioactive case was dismissed; widow did not appear at hearing.

STATE COMPENSATION INSURANCE FUND



MR. HERBERT WORTMAN
EXECUTIVE DIRECTOR

Colorado is one of twenty-three states that has a State Compensation Insurance Fund. There are three types of compensation available to employers over the nation and Colorado is one that allows all three. They are: State Insurance Fund, private insurance companies, and self-insurers. Seven states have monopolistic state funds.

This means that the Colorado legislature has made available to employers all types of compensation insurance.

The Colorado State Insurance Fund has enjoyed a steady growth in line with the steady advancement of industry in the State. A non-profit plan that enables compensation insurance (which is compulsory in Colorado) to be written by the fund at 30% less than manual insurance rates.

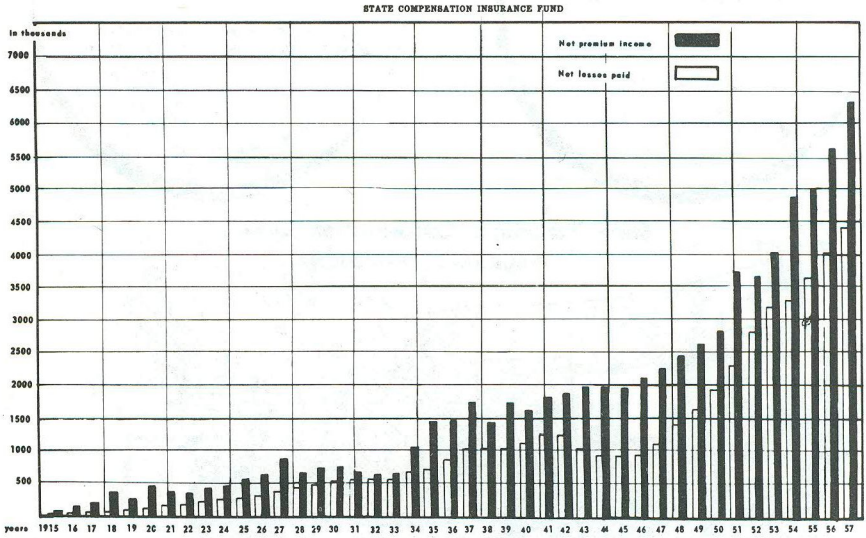
Since the fund is self-supporting and writes the compensation coverage for all State, County, Municipal and School employees at a considerable savings, it saves the taxpaying public a considerable amount.

The fund is administered by the Colorado Industrial Commission.

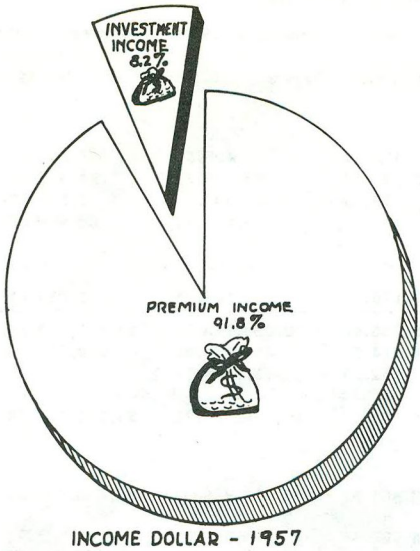
STATE COMPENSATION INSURANCE FUND

Income and Disbursements

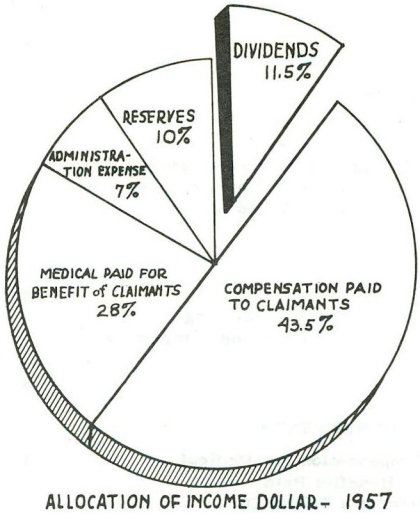
	July 1, 1956 to Dec. 31, 1956	January 1, 1957 to Dec. 31, 1957	January 1, 1958 to June 30, 1958
INCOME			
Premiums written	$2,855,305.29	$6,358,499.51	$3,645,344.21
Interest Received	135,301.32	380,235.72	194,316.25
Sale and Redemption of Bonds	90,453.15	2,259,801.70	58,233.00
Sale and Redemption - Mortgage Loans	0	5,441.99	23,990.87
Collection of Premiums Previously Charged Off	0	0	19.37
Miscellaneous	7,176.72	34,194.35	11,951.48
	$3,088,236.48	$9,038,173.27	$3,933,855.18
Cash on Hand - Beginning	318,914.69	650,776.86	688,309.05
Premiums Outstanding - Beginning	221,552.25	231,138.59	119,205.00
	$3,628,703.42	$9,920,088.72	$4,741,369.23
DISBURSEMENTS			
Compensation and Medical Benefits Paid	$2,033,601.51	$4,417,988.02	$2,466,935.62
Premiums Written Off	5,907.34	4,662.95	1,585.94
Dividends to Policy Holders	79,701.00	325,366.00	294,036.00
Operating Expenses	237,545.01	585,025.67	291,822.80
Investments			
Bonds	389,922.11	2,814,868.94	874,372.98
Mortgage Loans	0	964,554.09	0
Warrants	111.00	109.00	233.00
	$2,746,787.97	$9,112,574.67	$3,928,986.34
Cash on Hand - Ending	650,776.86	688,309.05	412,362.08
Premiums Outstanding - Ending	231,138.59	119,205.00	400,020.81
	$3,628,703.42	$9,920,088.72	$4,741,369.23



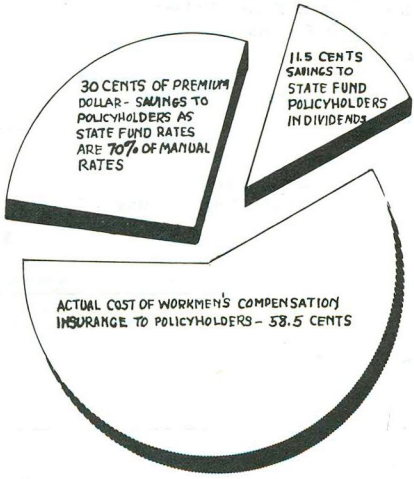
STATE COMPENSATION INSURANCE FUND



INCOME DOLLAR - 1957

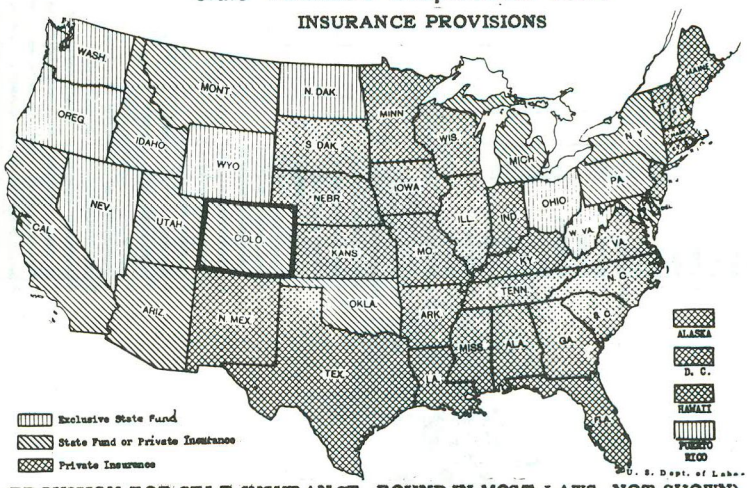


ALLOCATION OF INCOME DOLLAR- 1957



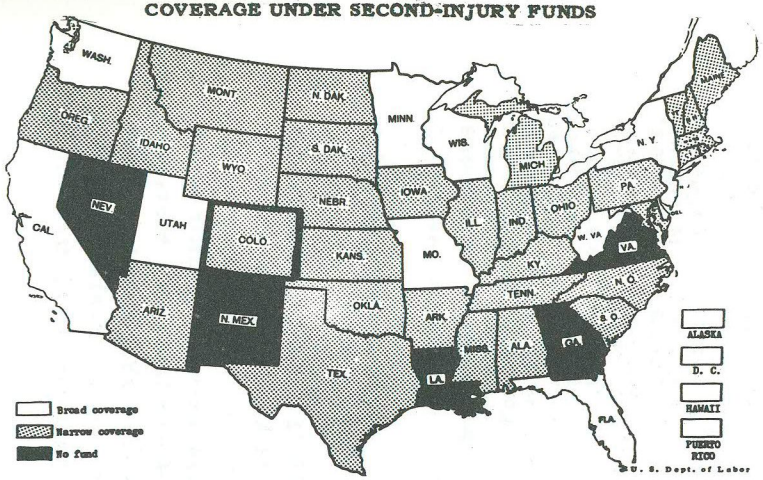
State Workmen's Compensation Laws

INSURANCE PROVISIONS

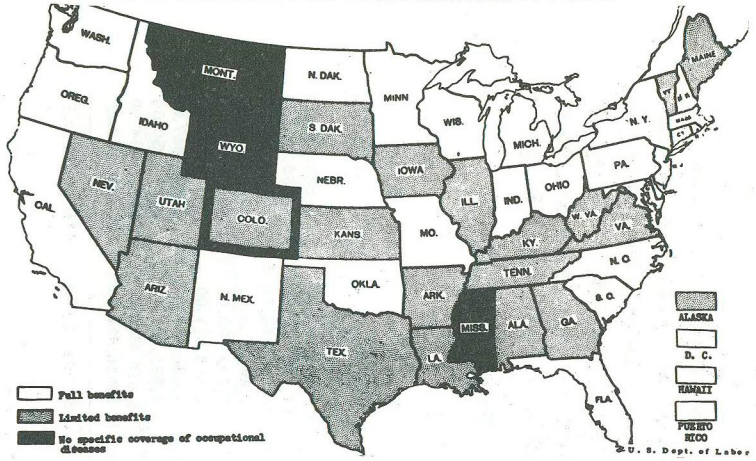


(PROVISION FOR SELF-INSURANCE, FOUND IN MOST LAWS, NOT SHOWN)

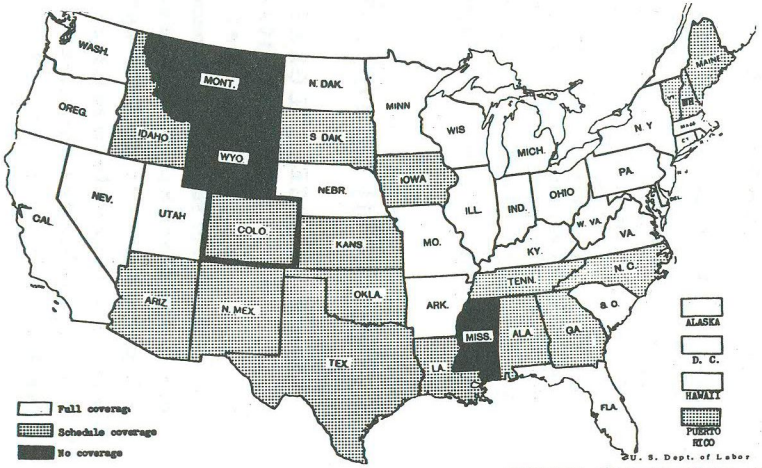
COVERAGE UNDER SECOND-INJURY FUNDS



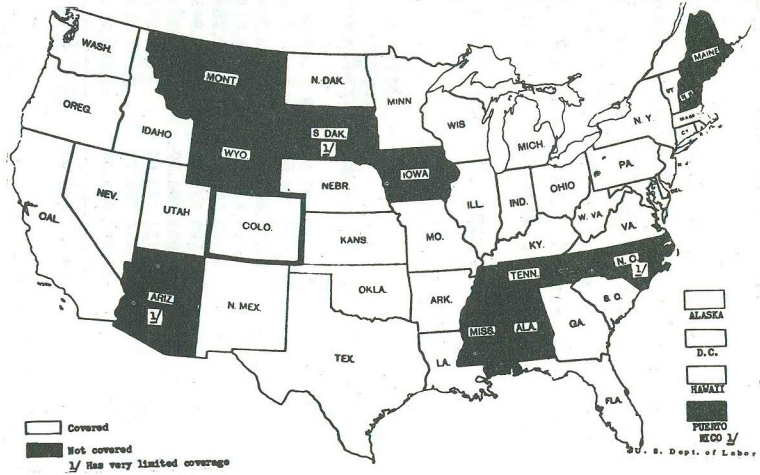
MEDICAL BENEFITS FOR OCCUPATIONAL DISEASES



OCCUPATIONAL DISEASE COVERAGE



COVERAGE OF DISEASES CAUSED BY EXPOSURE TO IONIZING RADIATION



STATE WORKMEN'S COMPENSATION LAWS

WORKMEN'S COMPENSATION INSURANCE

In no better way can the industrial growth of Colorado be shown than by the following figures. Of the $143,766,333.55 of premiums collected from 1915 through 1956, 16.47% was paid in the 15 year period 1915 to 1930; 15.74% in the next 10 year period 1930 to 1940; 28.56% in the 1940 to 1950 period, and in the last 6 years (1950 - 1956 inc.) 39.23%.

Premium Income and Losses Paid—Colorado

NET PREMIUM INCOME

YEAR	STOCK COMPANIES	MUTUAL AND RECIPROCAL COMPANIES	STATE FUND	TOTALS
1915-1929	$11,870,309.33	$ 5,380,037.70	$ 6,430,370.60	$ 23,680,717.63
1930-1939	7,719,776.00	3,194,665.00	11,721,102.00	22,635,543.00
1940-1949	13,877,680.59	6,583,964.59	20,596,380.74	41,058,025.92
1950	1,781,438.00	768,018.00	2,842,613.00	5,392,069.00
1951	2,390,698.00	675,264.00	3,752,990.00	6,818,952.00
1952	2,595,026.00	934,945.00	3,658,071.00	7,188,042.00
1953	3,005,406.00	601,174.00	4,086,367.00	7,692,947.00
1954	3,151,388.00	899,932.00	4,881,330.00	8,932,650.00
1955	3,316,288.00	1,141,251.00	5,075,495.00	9,533,034.00
1956	3,783,029.00	1,404,736.00	5,646,588.00	10,834,353.00
Totals	$53,491,038.92	$21,583,987.29	$68,691,307.34	$143,766,333.55

NET LOSSES PAID

YEAR	STOCK COMPANIES	MUTUAL AND RECIPROCAL COMPANIES	STATE FUND	TOTALS
1915-1929	$ 6,008,897.55	$ 1,674,021.75	$ 2,995,889.72	$ 10,678,809.02
1930-1939	4,567,351.00	1,836,382.00	7,905,581.00	14,309,314.00
1940-1949	5,183,534.00	2,433,041.00	11,823,381.33	19,439,956.33
1950	826,115.00	310,020.00	1,979,221.00	3,115,356.00
1951	1,145,160.00	331,371.00	2,339,126.00	3,815,657.00
1952	1,357,959.00	438,992.00	2,845,778.00	4,642,729.00
1953	1,563,894.00	252,180.00	3,205,473.00	5,021,547.00
1954	1,671,650.00	395,648.00	3,317,263.00	5,384,561.00
1955	1,772,699.00	488,978.00	3,661,721.00	5,923,398.00
1956	1,974,369.00	557,461.00	4,000,548.00	6,532,378.00
Totals	$26,071,628.55	$ 8,718,094.75	$44,073,982.05	$78,863,705.35

DEPARTMENT OF EMPLOYMENT SECURITY

REPORT TO THE COLORADO INDUSTRIAL COMMISSION
JULY 1, 1956 - JUNE 30, 1958

The Colorado Industrial Commission serves, ex-officio, as the Unemployment Compensation Commission in providing a higher authority to hear appeals from the decision of the referee in unemployment insurance cases. It also is legally responsible for adoption of all regulations required under the Employment Security Act.

EMPLOYMENT SECURITY

NUMBER OF APPEALS HOLD STEADY

The two year period from July 1956 through June 1958 was on the whole a biennium of healthy growth of the State's economy, even though a downturn occurred in many business ventures toward the end of the period. As the higher appeals authority, the Industrial Commission received 187 appeals from department decisions, and disposed of 184 of them, either by decision or by permitting withdrawal of the case. One hundred fifty decisions were rendered, of which twenty-eight were in favor of the appellant and one hundred twenty-two sustained the decision of the Department. This appeals load was nearly identical in size with that received during the preceding biennium, but more than half of the appeals were received during the last nine months of the period, as business slackened and unemployment insurance claims mounted.

The regulations governing administration of the Employment Security Act were revised by the Industrial Commission in 1955, and it was not necessary to further revise any of them during the period ending June 30, 1958.

NUMBER OF STRIKES IS DOWN

Under Section 82-4-11 of the Employment Security Act, the Industrial Commission is required to determine whether any work stoppage is due to a strike, and if so, what categories of workers are involved. The department then determines the claimant's responsibility in connection with his employment. During the period covered by this report the Commission was called upon to determine the nature of nineteen work stoppages. In all nineteen cases it was held that the work stoppages were strikes. This is only two-thirds as many labor disputes as were referred to the Commission in the preceding biennium.

EMPLOYMENT IN STATE SHOWS GROWTH

Proof that industry in Colorado continued to grow during the last two years is furnished by comparison of numbers of workers covered by the Employment Security Act. In the fiscal year 1955-1956, the average monthly figure of covered employment was 264,814; in the 1956-1957 fiscal year, the monthly average was 296,919; in the 1957-1958 fiscal year, the monthly average was 302,580. This increase in covered employment is primarily an indication of the industrialization of the State's economy which has been noted for the past decade. In the three year period, the increase amounts to eleven per cent.

EMPLOYMENT SECURITY

Somewhat less of an increase is observed in the average monthly covered employment of Federal Government employees in Colorado. During 1955-1956, the monthly average of federal workers was 33,295; in the fiscal year 1956-1957, the monthly average of such workers was 36,927; in 1957-1958, the monthly average was 36,193; over the three year period the increase was eight per cent.

Turnover rates in most industry decreased during the biennium and fewer job openings were received by the Department, but placements into non-agricultural jobs held up well. In fiscal year 1955-1956 the Department made 88,903 non-agricultural placements; fiscal year 1956-1957 showed a record of 83,388 such placements; in fiscal year 1957-1958 a total of 82,461 placements were made. This is a decrease of seven per cent in placements accomplished over the three year period.

The greatest change in Colorado's economic picture in the past biennium is in the field of unemployment insurance. Here the most recent experience bears little resemblance to the records of the preceding years. During the fiscal year 1955-1956 the average number of benefit payments to unemployment insurance claimants was 2,144 per week; during fiscal year 1956-1957 the average number of payments was 3,279 per week; in the fiscal year 1957-1958 the average rose to 6,643 payments per week.

Amounts of money paid in unemployment insurance benefits increased in proportion to the number of payments. In fiscal year 1955-1956 the Department paid $2,901,717.00 in benefits to unemployed workers; in the fiscal year 1956-1957 it paid $4,760,770.00 in benefits; in 1957-1958 the remarkable total of $10,903,127.00 was paid. This last figure is approximately double the amount previously paid out in any twelve month period since the inception of the unemployment insurance program in 1939.

Many factors have operated to increase benefit payment totals. The constantly increasing number of covered workers caused by expansion of industry; the extension of coverage in 1956 to employers of four or more workers; gradually increasing wage rates; increases in amount and duration of benefits enacted by the Legislature; all have combined to effect larger payments to unemployed workers. The unemployment insurance program has become a powerful weapon to combat reduced purchasing power and economic distress during periods of industrial retrenchment.

TABLE OF CASES

DR. PEPPER BOTTLING COMPANY vs. INDUSTRIAL COMMISSION AND BURKS

134 Colo. 238
301 P. (2) 710

I.C.No. 804-537 — INDEX NO. 460
STATUTE OF LIMITATIONS — JUDGMENT AFFIRMED

OPINION BY JUSTICE MOORE

Claimant suffered a compensable back injury on November 3, 1947. A spinal fusion was performed on November 11, 1947 and claimant returned to work in 1948 with no evident permanent partial disability. In September of 1951 claimant assisted in removing an old bath tub from premises where a new tub was to be installed and re-injured his back. On March 15, 1953 the Commission reopened the 1947 case on claimant's petition. The evidence disclosed that claimant had undergone a second fusion (performed anteriorly) and it was

found under date of July 14, 1953 that claimant had a permanent partial disability of 10% as a working unit resulting from the 1947 injury. However, it appeared at that time that claimant was disabled in excess of 10% but that the excess was the result of the 1951 incident. The order was complied with on August 10, 1953. On May 26, 1954 claimant petitioned and the Commission reopened the September 1951 injury and the doctors who previously testified now concluded that the disability in excess of 10% was not due to the 1951 incident but was, in fact, due to the 1947 injury. By the time the 1947 injury could be again reopened (June 3, 1954) the respondents contended that more than six years had elapsed since the date of the injury (November 3, 1947) and more than two years from the date of last payment of compensation (August 10, 1953) on the ground that all compensation, if paid when due without interruption, would have been paid by April 5, 1952.

The District Court affirmed the Commission's award for increased compensation by reason of the 1947 injury.

In affirming the District Court, the Supreme Court

HELD: "Under the foregoing facts, did the two-year statute of limitations begin to run April 5, 1952 (the date on which the last payment for permanent disability would have been made if there had been continuous monthly payments during the period of time covered by the final award); or did said statute begin to run July 14, 1953, which was the date on which the Commission ordered, retroactively, the payment of $17.50 for every week beginning in May, 1948 until $3,531.71 had been paid?

"The answer is, that the statute did not begin to run until the award was, in fact, made by the Industrial Commission, which in the instant case was July 14, 1953. The Industrial Commission on June 3, 1954, ordered the claim reopened for further hearing. The application for the order, and the order itself, was made and entered within two years from July 14, 1953, and thus the action was taken well within the statutory period.

METZ LUMBER COMPANY vs. TAYLOR AND INDUSTRIAL COMMISSION

134 Colo. 249
302 P. (2) 521

I.C.No. 1-177-847
ACCIDENT ARISING OUT OF EMPLOYMENT

INDEX NO. 461
JUDGMENT AFFIRMED

OPINION BY JUSTICE BRADFIELD

Claimant's duties as an employee of the plaintiff in error includes hard manual labor. On May 12, 1955, while at work, he experienced pain in his low back. There was no history of accident in the generally accepted meaning of that term. Claimant quit work for the balance of the week, consulted a doctor, and on May 16, 1955 reported back for lighter employment which his employer gave him. He gradually increased his activities until October 10th when he was again forced to quit work because of radiating pains in his legs. However, on September 24, 1955 he cut ten 80-foot rows of popcorn in his own yard. The cutting was done with a 6 inch knife.

The Commission granted compensation and the District Court affirmed.

In its affirmance of the award, the Supreme Court

HELD: "Whether claimant's injury arose out of and in the course of his employment at the lumber yard on May 12, 1955 or arose out of his employment cutting corn at his home on September 24, 1955 presented a question of fact to be determined by the Referee and the Commission. They both found that injury arose out of and in the course of his employment at the at the employer's lumber yard on May 12, 1955. The accident was found at a definite time, 'was unexpected' and 'unintended' and under the decisions of this Court would be an 'accidental injury under the Compensation Act.'

"The judgment is affirmed."

CONTINENTAL CASUALTY COMPANY v. INDUSTRIAL COMMISSION AND TUCKER

134 Colo. 393
304 P. (2) 628

I.C.No. 1-202-244
SERVICES LOANED
CONTRACT OF EMPLOYMENT

INDEX NO. 462
JUDGMENT AFFIRMED
WITHOUT WRITTEN OPINION

Claimant was employed by Reliable as a mechanic and driver. Reliable is engaged in the business of renting and leasing automotive equipment. Prior to October 10, 1955, Ashworth was engaged in heavy hauling and the hauling of materials which required special handling. Ashworth had need for extra equipment and was relying on one Hunter to supply it. On the date last mentioned Hunter telephoned Ashworth and informed it of his inability to assist the next day but assured Ashworth that he would have other equipment present for its use. Hunter thereupon invoked the services of Reliable who agreed to have a tractor and driver on the premises of Ashworth at 8:00 o'clock a.m. Lessors of such equipment are forbidden to include drivers with their equipment by ruling of both the Interstate Commerce Commission and the Colorado Public Utilities Commission, They may, however, recommend drivers but in performance of the contract the driver is supposed to be the employee of the lessee of the leased equipment.

It was understood that Ashworth would require the leased equipment for only part of October 11, 1955. Reliable, after gaining claimant's consent, sent him on the job but neglected to tell him that he would cease to be Reliable's employee for one day and become an employee of Ashworth at a lesser rate of pay per hour.

Ashworth also failed to make the new arrangement known to claimant. Upon claimant's arrival at Ashworth's premises, its foreman asked him his name and if he had a driver's license and what experience he had had but no words were spoken by either which could be considered a contract of employment, and surely there was no meeting of the minds.

All respondents admit that thereafter claimant was injured in an accident arising out of and within the course of his employment which rendered him temporarily and totally disabled.

Section 11, Workmen's Compensation Act; 81-13-1 provides:

"Where an employer, who has accepted the provisions of the Act and has complied therewith, shall loan the services of any of his employees, who have accepted the provisions of this Act, to any third person, he shall be liable for any compensation thereafter and for any injuries or death of said employee as in this Act provided, unless it shall appear from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, by the employee whose services were loaned and the person to whom he was loaned."

The Referee finds no new contract of hire by the claimant and Ashworth and therefore, concludes that claimant was the employee of Reliable.

The Commission affirmed the above order of the Referee, as did the District Court, and subsequently the Supreme Court without written opinion.

SMITH v. INDUSTRIAL COMMISSION AND ALLEY

SMITH v. INDUSTRIAL COMMISSION AND ALLEY

134 Colo. 454
306 P. (2) 254

I.C.No. 1-168-434 INDEX NO. 463
FARM LABOR DEFINED JUDGMENT REVERSED
ELECTION TO ACCEPT ACT

"Opinion by Chief Justice Moore and claim on file with the Commission characterizes the occupation of claimant as "farm hand." He testified that his employer was engaged in the business of operating farms and marketing cattle and hogs; that claimant was engaged in feeding cattle and taking care of hogs belonging to his employer; that his duties as an employee at first were running a mower and rake, in harvesting hay crops; that the hogs came from his employer's farm in Kansas and that no hogs or cattle were fed except those belonging to his employer; that part of the feed used was grown on his employer's Colorado farm, and other parts of it were 'supposed' to have come from Kansas, that the corn which was fed to the animals came in on shipments in box cars.

81-2-6 (3) C.R.S. 53 provides:

"This chapter is not intended to apply to employers of ***farm and ranch labor,***; provided, that any such employer may elect to accept the provisions of this chapter in the manner herein provided.

"The claimant alleged that he was injured on January 29, 1955. The files of the Commission disclosed that on April 23, 1945, a printed card, the blank portions of which had been filled in by typewriter, was received through the United States mail. This card was unsigned, and stated in substance that Carl S. Smith (the employer) 'elects to accept the provisions of the Workmen's Compensation Act of Colorado***.' The only possible explanation for the presence of this card in the Commission's files was given by the employer who testified that in 1945 - ten years before the incident involved in this case and long before he owned any farm property in Colorado - he took out liability insurance to protect himself against claims which might arise against him in connection with his Kansas operations; that he then had only one employee who at certain short periods of time worked in Colorado; that the insurance policy was not taken out with any reference to Workmen's Compensation laws of Kansas or Colorado but was written in Denver by an agent of the Travelers Insurance Company."

Two questions are to be determined:

First, was Smith an employer of farm and ranch labor?

Second, was there competent evidence to support the findings of the Commission that the employer elected to accept the provision of the Compensation Act?

The Commission held that respondent employer was engaged in the operation of a feed lot which was not ranching or farming and that the unsigned notice from his insurance carrier that claimant had accepted compensation coverage was in compliance with the statute.

In reversing the Commission and District Court, the Supreme Court

HELD: (1) "From the facts as we have stated them, it seems clear and we so hold, that claimant in this case was employed at 'farm and ranch' labor within the meaning of the language above quoted, and that the employer comes within the exception excluding farm and ranch labor from the provisions of the Workmen's Compensation Law. In Billings Ditch v. Industrial Commission, 127 Colo. 69, 253 P. (2) 1058, we said:

'Farm and ranch labor falls, of course within the field of agriculture which, while not a technical term, has many times been legally defined. Without undertaking to repeat these definitions at length, we state that, agriculture in general refers to any activity incident to cultivation of land for the growing of crops, the harvesting thereof, and the care and feeding of livestock.*** It includes tillage, seeding, husbandry, and all things incident to farming in the widest sense of that term.'

(2) "The policy issued in 1945 was cancelled in 1949 - three years before the employer began any farm or ranch operations in Colorado. Obviously this 'evidence' falls far short of establishing that an election to accept the Act ever was filed or authorized by the employer. His speculation concerning the card, being based on pure conjecture, was incompetent for any purpose. The only competent evidence on the subject was given by the employer who emphatically denied that he ever elected to accept coverage under the law. The burden of proof was on claimant to establish by competent evidence that the employer himself, or some person by him duly authorized, filed'***with the Commission a written statement to the effect that he accepts the provisions of this chapter.' No competend evidence was offered to establish this very essential fact."

VANADIUM CORPORATION v. SARGENT AND INDUSTRIAL COMMISSION

134 Colo. 555
307 P. (2) 454

I.C.No. 1-150-721
PRE-EXISTING PHYSICAL CONDITION
TEMPORARY TOTAL DISABILITY
NON-AUTHORIZED MEDICAL COMMISSION ORDER INTERLOCUTORY

INDEX NO. 464
JUDGMENT AFFIRMED IN PART AND REVERSED IN PART

OPINION BY JUSTICE SUTTON

"Claimant had an admitted congenital defect at his fourth and fifth lumbar vertebrae and at the sacrum. The defect is termed a spondylolisthesis. This defect, however, was not serious enough to keep him from military service during World War II though later he was medically discharged with a rating of 10% disability on his back and 10% for a nervous condition. His back bothered

him in September 1953 so he consulted Dr. Charles L. Mason at Durango, Colorado, and Dr. Mason called in Dr. Erwin P. Wenz as a consultant. The doctors, after x-ray examination, recommended a spinal fusion. Claimant went to a Veterans' Hospital where the fusion was not deemed necessary but where a neural arch operation was performed during March, 1954. It was in May, 1954, following that operation that claimant was hired by this employer and did day laborer work at employer's mill. Claimant admittedly did this hard labor for over five months, and until the occurrence on November 7, 1954, without other than occasional pain in his back.

'***On the day of the injury he was shoveling gravel into a cement mixer when he jumped up from a bending position to use his shovel to push some gravel down. At that moment, according to his testimony, he had a 'severe hurting, cramps or pain in the back of my neck, and then one hit me a little bit below my shoulders and I also had a drawing sensation in the head, of being intensely drawn backwards; and then one hit me in the middle of my back, approximately at that time, and when this hit me in the middle of my back it seemed like something just let go in my head and I blacked out.'

"Following the injury of November 7, 1954, claimant was hospitalized a short while, then rested at home, then attempted to work for the employer again on November 20 and 21, 1954. He could not stand the pain, however, and has not worked since. He has been to the Veterans' Hospital, to Dr. Mason, to whom the employer first referred him, then to Dr. Wenz. He knew his injury might not be compensable because of his congenital defects. He testified, without contradiction, that he went to Dr. Wenz (which visit resulted in the operation described in Dr. Wenz's letter on October 18, 1955) because he went to his employer's mill at Durango and Mr. Vesper, the employer's assistant mill superintendent, 'suggested that I change doctors.'

"Here the record discloses that claimant first went to Dr. Mason as directed by the employer, Being dissatisfied he then went again to his employer who authorized to change doctors. Claimant then went to Dr. Wenz, later to another doctor and to the Veterans' Hospital, then back to Dr. Wenz who operated on him.

The Commission entered an order for compensation to claimant during temporary total disability which the District Court affirmed. The questions to be determined are as follows:

1. Does the evidence properly before the Commission support a finding that claimand was more than temporarily and totally disabled?

2. Was disability terminated at the final date in the record?

3. Does the evidence support the contention that the surgery performed by Dr. Wenz was to relieve a condition proximately caused by the accident of November 7, 1954?

4. Did claimant change doctors without conforming to the Statute?

5. Did the Referee err in failing to afford the respondents an opportunity to cross-examine Dr. Wenz in re: letter October 18, 1955?

6. Does the evidence prove that herniated disc resulted from the accident of November 7, 1954?

7. Was the original order of the Industrial Commission the final order from which plaintiffs in error had to appeal within 15 days under 53 C.R.S. 81-14-6?

The Supreme Court resolves these questions as follows:

1. "Here the facts disclose that the pre-existing congenital back condition did not prevent claimant from performing hard physical manual labor for this employer for over five months immediately preceding November 7, 1954. It is undisputed that the accident occurred and that it arose out of and during the course of the employment. From the record it is clear that claimant could not work after the accident. He has shown the causal connection and the proximate result. The various adverse opinions of some of the doctors as to claimant's condition after the accident cannot be the sole determinative factor here. Opinion must fall before the actual fact that claimant was able to work before the accident. There is clearly some evidence to support the findings of the Referee of the Commission. We have often held that findings of facts of the Industrial Commission based upon conflicting testimony or evidence are conclusive on review**.

2. "Once the injury is determined to have arisen out of and during the course of claimant's employment obviously the results flowing proximately and naturally therefrom come under the aegis of the statute. Here payments properly must continue for total disability until either the claimant has recovered or until full statutory benefits have been paid.

3. "The record here shows that the weight of opinion is that claimant here needed a spinal fusion operation. He had it performed by his private doctor without following the statutory method of procuring his own surgeon. The fact that the operation was unsuccessful does not bar him from his just compensation as to other than his privately incurred and unapproved bills.

4. "This type of situation is not expressly covered by our statute, so we must determine the statute's intent. The employer did tender the services of Dr. Mason 'in the first instance' and 'at the time of injury' so the employee's secondary right of selection was forever lost. Can we say that in the second instance the employer can give an employee carte blanche to select a different doctor, especially when the employee's selection has resulted in surgical expense to not only the employer but also the Fund? We think not. True it is that Mr. Vesper telling claimant to change doctors resulted in a waiver of the employer's right in this regard, but the employer was not the agent for the for the Commission after it had acted 'in the first instance' nor could it waive the Fund's rights nor waive the express statutory requirement that'*** upon the proper showing to the Commission (the employee) may procure its (the Commission's) permission at any time to have a physician of his own selection attend him ***.' Any other holding would render the statute nugotory and would deny to those who pay the bills their legal right to know what is being done.

5. "We will not assume that the Commission did admit or consider such evidence as the letter in question in the absence of a statement to that effect in the record. Here the record does not disclose such admission in evidence or that the Commission considered it. Clearly it was not necessary to admit or consider the letter for there is ample evidence relating to the ruptured disc's removal to sustain the findings relating thereto.

"It is not necessary for us to determine whether the Fund made application in due time to examine and attempt to rebut this letter--assuming without deciding that they could cross-examine this witness.

6. "From the earlier quotations from the Fund's own doctors we can see that they knew that Dr. Wenz had found and removed a herniated disc. There being some evidence before the Commission to sustain its findings as to the removal of a herniated disc, we will not disturb its decision on review.

7. "Here it is clear that the original Commission Order of January 25, 1956 was interlocutory. The Commission has continuing jurisdiction until a final award is made either by terminating benefits or by ordering benefits to continue as provided by law** "

The judgment of the trial court affirming the Industrial Commission was affirmed "except as to the payment of medical, surgical and other expenses of claimant for his operation following the accident of November 7, 1954."

DENVER TRUCK EXCHANGE v. PERRYMAN

134 Colo. 586
307 P. (2) 805

I.C.No. 1-093-263 — INDEX NO.465
SITUS OF EMPLOYMENT CONTRACT — JUDGMENT REVERSED
EMPLOYEE COVERAGE OUT OF STATE
EMPLOYEE DEFINED

OPINION BY JUSTICE SUTTON

"On December 31, 1952, at Smith Center, Kansas, Perryman, who had been last seen driving one truck and towing another, was found dead in a ditch about 150 feet from his two trucks. The vehicle he was driving had its door open, lights on and ignition off. No autopsy was performed though he met a violent death, the cause of which is not in dispute. The truck which Perryman was driving and the towed vehicle both were the property of employer whose principal place of business is in Englewood, Colorado. They had been picked up by Perryman at Pontiac, Michigan, for delivery to the employer at Englewood, Colorado.

"The evidence showed that prior to 1951 employer had its Colorado employees go to Michigan to pick up trucks for it. In 1951, one Estlinbaum, who was in the truck transport business in Detroit, asked employer if he could pick up employer's trucks at Pontiac, Michigan, and either drive them or have them driven to Colorado. These arrangements were discussed in Colorado. The arrangements were to be as follows: Employer, at his expense, secured release forms for each vehicle which authorized a driver to pick up the designated truck. He inserted Estlinbaum's name in each release (and occasion-

ally later the names of others designated by Estlinbaum) and then sent them to him in Detroit, Michigan, with a check for $150.00 for advance expenses. In addition, once the trucks arrived in Colorado employer reimbursed Estlinbaum for actual gas, oil, grease and other actual transport expense, if any. Estlinbaum paid his own personal expenses and for his own transportation back to Detroit. Estlinbaum furnished the couplings for the two trucks. The actual contract price was always to be an amount equal to 50% of the railroad freight rate plus the mentioned reimburseable items. The title to the trucks was in employer who insured them and furnished his dealer's license plates for same. The route to Colorado had to be either through Kansas or Nebraska. If a truck had been sold in Colorado before delivery, a delivery date was set, otherwise not, then only a reasonable time was expected. No stops or speeds, other than legal speeds, were imposed by employer on the driver. No controls were exercised over the time of leaving or over the route other than as above stated, or over any other mode of operation. Each delivery was fully paid for when completed in Colorado. No Workmen's Compensation insurance, no social security and no withholding tax were paid by employer on Perryman or, we assume on Estlinbaum or his son who also helped out, for he never considered them as employees.

"The record further shows that during the approximately two years involved Perryman made 'about five trips' to Oklahoma for other unknown owners and about eight trips to Denver.

"Employer had never seen or heard of Perryman until following a call from Estlinbaum, he arrived sometime prior to this accident with two trucks. Perryman thus first arrived as Estlinbaum's agent or employee. At that time in Englewood, Colorado, employer told Perryman how he reimbursed Estlinbaum for his truck expenses. Perryman had paid out his own money coming from Michigan so when the employer asked how to make out the check for the truck expense Perryman said to make it to him which was done. However, the record also shows some of the other checks at later times involving Perryman were made to Estlinbaum, and that Estlinbaum continued to have an interest in the haulage even though for a time he was too busy to do the work himself. The final check for the fatal trip was drawn to Estlinbaum. He sent Perryman several times and sent his son another time."

The Commission held that the contract of employment had been entered between employer and Perryman in the State of Colorado and that Perryman's death arose out of and within the course of that employment. In reversing the District Court's affirmance of that Order, the Supreme Court

HELD: 1. "Was the transport contract entered into in Colorado or Michigan?

2. Was a substantial part of Perryman's work performed in Colorado?

3. Was Perryman an employee of employer within the definitions of our statute?

1. This question is answered in the negative. The sole contract to be considered here is the one when Perryman was killed. It did not exist until Estlinbaum received the releases and check for that trip and accepted them by beginning performance in Michigan. These items, when sent, constituted the offer. Estlinbaum's acts in Michigan were the acceptance. The ultimate criterion of the place where the contract is deemed to have been made is the place where the last act necessary to complete it was done***. We hold, therefore, that even though bringing in trucks or having them brought into Colorado from Michigan by an independent contractor was part of the usual and normal business of this employer, nevertheless this statute (Sec. 49 W.C.A.) does not apply to such employment.

2. This question is answered in the negative. There was a separate contract of employment each time a trip was made. Since Perryman left Michigan where the contract for his last trip was entered into, and since he was killed in Kansas before arriving in Colorado, he performed no work in Colorado.

3. This question is answered in the negative. The statute (Sec. 9 W.C.A.) defining employee reads in part: 'Every person in the service of any person, ***private corporation***, under any contract of hire, express or implied*** but not including any persons who are expressly excluded from this chapter or whose employment is but casual and not in the usual course of trade, business profession or occupation of his employer.'

"Clearly this wording has no application to Perryman for this employer never hired him, nor was the work by him on the contract in question done in Colorado, though it was in the usual course of employer's business. Under the above facts it was erroneous for the Referee, Commission and lower court to find that Perryman was employer's employee. He was an employee of Estlinbaum or a joint venturer with Estlinbaum or an independent contractor, and we have earlier herein stated that he did not come under the protection

of '53 C.R.S. 81-9-1 (Sec. 49 W.C.A.) relating to employees of independent contractors. The record is silent as to his relationship with Estlinbaum but since Estlinbaum sent him the first time and he expressly continued under the same arrangement, since some checks were made to Estlinbaum at Perryman's instruction and since he was driving on releases and money sent to Estlinbaum when he was killed outside of Colorado, the available evidence indicates that if he was employed by anyone he was employed by Estlinbaum. Merely discussing and agreeing during his first trip to the same terms of expense reimbursement formerly arranged with Estlinbaum did not make Perryman an employee.

"The judgment of the court was reversed with instructions to dismiss the claim for lack of jurisdiction."

INDUSTRIAL COMMISSION and FERENCIK v. COLORADO FUEL AND IRON CORPORATION

135 Colo. 307
310 P. (2) 717

I.C.No. 1-169-309
REASONABLE INFERENCE FROM EVIDENCE PRE-EXISTING DISEASE INCREASED RISK

INDEX NO. 466
JUDGMENT REVERSED

OPINION BY JUSTICE KNAUSS

"Claimant had been employed by The Colorado Fuel and Iron Corporation for many years. On March 14, 1955 while engaged in cutting down an ash hopper with a blow torch on an I beam some eighteen feet above the ground level, claimant became ill, sat down on the I beam and toppled to the ground into a pile of metal, some of which was hot. He suffered a paralysis of his left side together with burns on his right hand, and contusions. That claimant is permanently disabled in not disputed.

"The Referee of the Commission made his first findings and award on October 5, 1955 and determined 'from the medical evidence that a cerebral thrombosis of the left brain was the cause of claimant's fall and of his permanent disability, which now completely disables him, and that respondents are not liable for the effects of this systemic condition of unknown origin. However, respondents are liable for the damage caused by claimant having fallen eighteen feet to the debris below, and for the electric burns which, following the thrombosis in point of time, constitutes an aggravation of the pre-existing condition, which together, result in permanent total disability, making respondent liable for compensation to claimant for the remainder of his life."

The Referee's findings were approved and adopted by the Commission.

"The cause was taken to the district court and on March 1, 1956 that court remanded the case to 'the Referee for the taking of further evidence to determine the extent of the disability and the percentage of disability sustained by claimant by reason of natural causes**.

"Additional evidence was taken and on April 25, 1956 the Referee made his supplemental findings and order pursuant to the court order. These findings repeated the original report that the thrombosis was not associated with claimant's employment, 'therefore the effects of which are not compensable. However, the permanent partial disability resulting from the fall is compensable because of the increasing peril in which his employment placed him. The Referee finds that the claimant did suffer some degree of permanent partial disability from the fall and while the exact amount is not too important, the Referee finds it to be 15% as a working unit. This disability, superimposed on claimant's pre-existing infirmity, has resulted in permanent total disability for which respondent employer is liable.

"The cause was again taken to the district court where on review that court set it aside and stated 'the award of the Commission is contrary to the evidence' hence void and of no effect.

In reversing the district court the Supreme Court

HELD: "It is no longer open to question in this State that an award of the Commission is conclusive upon all matters of fact properly in dispute when supported by evidence or the reasonable inference to be drawn therefrom.

"The testimony given by six medical experts relative to claimant's injuries was in dispute. Four of them testified that claimant's disability was due to the thrombosis. Two of the doctors called attention to the condition of claimant's hand due to burns received in the accident. One doctor said he suffered a 40% loss of his right hand, measured at the wrist.

"As above noted, on this conflicting evidence the Commission found that the degree of claimant's disability as a result of the fall was 15% as a working unit.

"***To the extent of the disability occasioned by the fall, claimant is entitled to compensation.

'The Commission was not bound to accept the highest nor the lowest estimate made by the medical witnesses as to claimant's disability if any existed, nor any exact intermediate estimate of disability. **'

"In Kamp v. Disney et al 110 Colo. 518, this court held that a pre-existing disease will not render non-compensable an injury received under the Workmen's Compensation Act. **

"Substantial and increased risk to which the workman is exposed owing to the position in which he has to work gives rise to a compensable claim for injuries directly attributable to such situation.

"The judgment is reversed and the cause remanded to the district court with directions that it return the case to the Commission with instructions to enter an award in favor of claimant on the basis of 15% of his total permanent disability."

INDUSTRIAL COMMISSION and TATE v. LONDON & LANCASHIRE INDEMNITY COMPANY

135 Colo. 372
311 P. (2) 705

I.C.No. 1-215-323 — INDEX NO. 4 67
PRESUMPTION AGAINST SUICIDE — JUDGMENT AFFIRMED
ACCIDENT ARISING OUT OF EMPLOYMENT

OPINION BY JUSTICE KNAUSS

"The claim filed by Mrs. Tate and her son alleged that Mr. Tate died as a result of falling or being pushed from the fourth floor window of the employer's warehouse where he was employed. Notice of contest was filed by the employer and insurance carrier. The defense was that the death of Mr. Tate did not result from an accident arising out of and in the scope of his employment and that his death was intentionally self-inflicted.

"It is admitted that Mr. Tate was working for the employer on the date of his death. His hours of employment were from 8 A.M. to 4:30 P.M. The building where he worked was a seven-story structure, a combination office and warehouse. About 5:30 P.M. on December 30, 1956 a man emerged from a building next door to employer's warehouse and observed the crumpled and broken body of Mr. Tate lying on the sidewalk in front of employer's building. At that time only the light in the first floor office of employer's premises was burning; the upper floors of the structure were dark. A window on the fourth floor of the warehouse some seventy feet above the sidewalk was open. Aid was summoned; Mr. Tate was removed to a hospital and died a short time thereafter. An examination of the premises disclosed that all doors and exits were closed and locked and that the fire doors were securely fastened. The window on the fourth floor was the only opening. Claimants produced evidence tending to show that Mr. Tate had no reason to commit suicide**

"The Referee of the Commission in his findings, adopted in toto by the Commission, said: 'There is no presumption of self-destruction in law, and respondents are obligated to show by conclusive evidence that the decedent met his death at his own hands, if they are to prevail in their denial of liability.**'

Reversal was handled in the district court and, in affirming, the Supreme Court

HELD: "**The fact that there is a presumption against suicide does not take the place of proof of an accident arising out of and in the course of employment.** We are satisfied that the claimants proceeded on a mistaken theory and it is obvious that the Commission accepted that theory by asserting that the employer and insurance carrier had to prove by conclusive evidence that the deceased met death at his own hands. We know of no authority and have found none which makes conclusive evidence the quantum of proof by which a presumption against suicide must be rebutted. The burden of proof remains upon the claimant to establish that the injury or death resulted from an accident arising out of and in the course of the employment and not intentionally self-inflicted."

STATE COMPENSATION INSURANCE FUND and FORT LEWIS A & M v.
INDUSTRIAL COMMISSION and BILLIE DWADE DENNISON

135 Colo. 570
314 P.(2) 288

I.C.No. 1-202-347
ACCIDENT ARISING OUT OF EMPLOYMENT
ATHLETIC SCHOLARSHIP
EMPLOYEE-EMPLOYER

INDEX NO. 468
JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

OPINION BY JUSTICE HOLLAND

This case involves an award for death benefits by the Industrial Commission affirmed by the district court and reversed by the Supreme Court. The decedent met his death while playing as a football player for the Fort Lewis A. & M. College. He was a student whose tuition and expenses were paid from various sources such as athletic scholarship known as "Grant-in-Aid", management of the student lounge; work on the college farm; and assistance from the G. I. bill. These various types of employment constituted about 20 hours a week but decedent was not paid for playing football and his various sources of income would continue whether or not he played football. The College was a state-supported institution which gave both men and women students job assistance without athletic requirement. Some evidence indicated that decedent was enticed into enrollment at the College in order to capitalize on his athletic ability. However, his employment while a student did not depend upon athletic participation. In the court's opinion compensation under the Workmen's Compensation Act arises out of a contractural relationship between employer and employee and the evidence herein did not disclose any such contractural obligation to play football and consequently the necessary employer-employee relationship did not exist and compensation rights could not accrue for the decedent's accident. The instant case was distinguished from the case of University of Denver v. Nemeth, 127 Colo. 385, 257 P. (2) 423 in that the latter case disclosed evidence showing that the student worker's employment depended wholly upon his playing football and that failure to perform as a football player would cause loss of the job provided by the university. Such was not the case concerning decedent's employment.

INDUSTRIAL COMMISSION and McCOLM vs. NEWTON LUMBER & MFG. and
OCEAN ACCIDENT AND GUARANTEE CORP. LTD.

135 Colo. 594
314 P. (2) 297

I.C.No. 1-148-289
EXCUSE FOR FAILURE TO FILE CLAIM
FINDINGS OF FACT

INDEX NO. 469
JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

OPINION BY JUSTICE KNAUSS

An award of compensation by the Industrial Commission was vacated by the district court and re-established by the Supreme Court.

Claimant sustained an accidental injury while working at his customary employment for the employer. This accidental injury was reported to the employer's foreman on the day it was sustained. The employer reported the accident and stated that it occurred on July 16, 1954 which was the correct date. Claimant was hospitalized 8 days during early August, 1954, and returned to the hospital on a later date in August, 1954, to undergo corrective surgery. Claimant filed for compensation on May 6, 1955 after employer's report of accident was made to the Industrial Commission on November 3, 1954. The insurance carrier filed its denial of liability on November 16, 1954, the notice of which was mailed by the Industrial Commission to claimant but which did not reach the claimant because of an incorrect address given to the Commission by the employer. The employer and the insurer resisted claimant's claim on the basis that it was not filed within six months after the accidential injury. Two questions were presented to the Court for determination:

1. Did the Commission properly excuse claimant's failure to file his claim within six months following his injury pursuant to C.S.R.; '53, 81-13-5, and

2. Did the evidence support the finding of fact made by the Commission.

The Court found that the pertinent statute vests a broad discretion in the Commission for determining what constitutes a reasonable excuse for the delayed filing of a claim. Upon analysis of the pertinent dates, the Court

determined that the claim was actually filed within six months from the date the employer filed its denial of liability. It was further found that the Industrial Commission is the agency specifically entrusted with the discretionary power to determine the facts in situations such as were presented, and its determination of such matters should only be set aside upon a showing of fraud or abuse of discretion, neither of which was shown by the record of this case. As authority the Court cited: C.F. & I. Corp. v. Industrial Commission 129 Colo. 287, 269 P. (2) 696, and Employers Casualty Co. v. Industrial Commission, 133 Colo. 536, 297. P. (2) 887. In the case the employer's rights were not prejudiced by late filing of the claim, since employer knew of the accident, when it occurred, who the medical attendants of claimant were, where he was hospitalized, and when he was admitted and when he was discharged from the hospital. These pertinent facts were disclosed by the employer's report to the Commission. In C.F. & I. Corp. case, supra, it is said:

***"We think the burden of proof of such a negative is not on the claimant. Nowhere in the record is there any showing of prejudice and it is not to be presumed from mere delay in filing the claim. Prejudice must be actual and must be shown to be actual."

Further, the absence of medical testimony does not amount to substantial error, whereas in this case the facts are established by other competent evidence. In this case, the claimant, who is qualified and competent witness to testify and relate what happened to him, gave clear and unequivocal evidence would have done no more than corroborate or supplement his testimony. Claimant's sworn statements, if credited by the Commission, were sufficient upon which to predicate an award, particularly where, as here, the report of the accident submitted by the employer fully and adequately describes the injury, the hospitalization, and related matters.

CHARLES E. CAIN v. INDUSTRIAL COMMISSION, MACCO-PUGET SOUND, and THE TRAVELERS INSURANCE COMPANY

136 Colo.
315 P. (2) 823

I.C.No. 1-129-211
EXPLORATORY SURGERY
REOPENING CLOSED CASE

INDEX NO. 470
JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

OPINION BY JUSTICE MOORE

Award of the Industrial Commission affirmed by the district court, but reversed by the Supreme Court.

Claimant sustained a cervical injury in an admitted industrial accident on 6/18/54 and reached maximum improvement January 6, 1955, at which time he was awarded 10% permanent partial disability. Claimant petitioned to reopen his claim on August 29, 1955 and was granted said permission in an Industrial Commission order. Claimant's physician testified that he was 20% permanently and partially disabled as a working unit and that further surgery was not advisable. Insurer's doctor examined claimant but refused to evaluate his symptoms and complaints in terms of permanent disability without being allowed to do exploratory surgery. Claimant refused surgery and the Industrial Commission dismissed his application to reopen his former claim. The Supreme Court held that once the Industrial Commission did reopen a case by setting a hearing date and by directing the Referee to enter his findings and award, then the Industrial Commission is obligated to decide the issues presented in all respects, as upon the original hearing and may not DISMISS AN APPLICATION TO REOPEN A CLAIM. Also the Court found that the proposed exploratory surgery was not indicated to be reasonably essential to promote claimant's recovery and thus did not constitute a refusal to submit to medical or surgical treatment as contemplated in C.R.S. '53, 81-12-12 and the penal provisions contained therein. In the concurring opinion the Court discountenanced the language of the National Lumber and Creosoting Company v. Kelly, 101 Colo. 535, 75 P. (2) 144, relative to invasion of claimant's body for physical examination. See also Riss & Company, Inc. v. Galloway, 108 Colo. 93, 114 P. (2), 550, 135 A.L.R. 878.

RCS LUMBER COMPANY and STATE COMPENSATION INSURANCE FUND v. RUFINA JOSEPHINE SANCHEZ And INDUSTRIAL COMMISSION

136 Colo.
316 P. (2) 1045

I.C.No. 1-212-897
STATUTORY EMPLOYEE
CONTRACT AND LEASE DEFINED
INDEPENDENT THIRD PARTY

INDEX NO. 471
JUDGMENT AFFIRMED

OPINION BY JUSTICE MOORE

Death claim awarded by Industrial Commission affirmed by district court and the Supreme Court.

Decedent and respondent executed an agreement whereby decedent, using his own truck, called upon New Mexico sawmill operators functioning under "cutting contracts" with respondents, to secure loads of raw lumber for delivery to respondent's Colorado establishment. Decedent would deposit loads of lumber in respondent's Colorado yard with the assistance of respondent's employees and thereafter would receive "memoranda" payable Friday of each week at respondent's Colorado office. It was contended by the respondent that it was merely a "disbursing agent" for the New Mexico sawmill operators but evidence disclosed that it purchased timber on lands in New Mexico and contracted with sawmill operators to cut this timber in the rough to deliver it to respondent's Colorado establishment. Decedent was killed at respondent's Colorado establishment while delivering such a load of lumber. The Court decided that the decedent was a "statutory employee" and not an "independent third party" as defined in the "cutting contracts" executed with New Mexico sawmill operators, since respondent, at all times, owned the timber being cut and by "cutting contracts" made it mandatory upon the sawmill operator to perform, or procure to be performed, service of transporting lumber to its Colorado establishment. The Court further found that the evasive device of "contracting out" a portion of its work in securing the cutting and delivery of its timber brought such operations squarely within the meaning of Section 49 of the Workmen's Compensation Act concerning contractors and lessees.

INDUSTRIAL COMMISSION and JAMES E. LEE. v.
EMPLOYERS CASUALTY COMPANY and BECKMAN, INC.

136 Colo.
318 P. (2) 216

I.C.No. 1-198-408
HORSEPLAY INJURY
ACCIDENTAL INJURY

INDEX NO. 472
JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

OPINION BY JUSTICE MOORE

The Supreme Court affirmed an award made by the Industrial Commission but set aside in the district court.

Claimant, while standing on the floor of an oil drilling rig where he was employed and while awaiting his foreman's orders, was struck in the eye with a rock playfully thrown by a fellow employee. The rock was not cast with malice and was only a thoughtless act. Claimant did not participate in any "horseplay" preceding his injury. The Supreme Court decided that an individual injured by a fellow employee's playful act is entitled to workmen's compensation when his injury occurs while he is attending to the duties customary and incident to his employment and where he has not stepped aside to engage in the playful actions giving rise to his injury. The controlling element in such situations is whether the claimant was a participant in the playful conduct which caused his injury and, if he is not a participant, the injury comes within the meaning of an accident arising out of and in the course of employment.

ALEXANDER FILM COMPANY and COLUMBIA CASUALTY COMPANY v.
INDUSTRIAL COMMISSION and OLSON

136 Colo.
319 P. (2) 1074

I.C.No. 1-091-489
ACCIDENT AWAY FROM BUSINESS SITUS
ACCIDENT ARISING OUT OF EMPLOYMENT

INDEX NO. 473
JUDGMENT AFFIRMED

OPINION BY JUSTICE FRANTZ

This is an award for death benefits made by the Industrial Commission, affirmed by the district court and the Supreme Court.

The decedent was employed as a director for the filming of respondent's advertising motion pictures. At the time of his death decedent was assigned

to a project being filmed in Michigan. Death occurred as he crossed the street from the restaurant where he had dined to the motel where he temporarily resided and where he worked when altering or re-writing scripts. Decedent's duties included securing a cast, determining location, selecting shooting locale, co-ordination of work, together with refinement or rewriting of scripts for the "next day's shooting." While on location the decedent usually devoted his evening to checking the following day's script with a purpose of re-writing or refining any elements that needed changing. Decedent was allowed to select his own lodging and eating places while away from respondent's business establishment and he received reimbursement for his expense on return to his permanent business address. During the afternoon preceding his death decedent informed his cameraman that he was returning to the motel for the purpose of revising the next day's script. The cameraman testified that it would require 2½ to 3½ hours to accomplish a complete revision. Decedent arrived at his motel at approximately 6 p.m. and was fatally injured at approximately 8 p.m. Objection was timely made that the cameraman's statements were heresay and the cause was appealed on that ground and the further ground that his death did not arise out of and in the course of his employment. The court disposed of the hearsay objection by defining the statements of the cameraman as an exception to the hearsay rule and admitted it as "a relevant ante-incident statement to do some act and thus it became classified as original evidence. Admissibility of such statements depended upon (1) whether they are related to a then existing state of mind, (2) whether they were made in the orginary course of things as the usual information a man would communicate to another under the circumstances, and (3) whether they were made under circumstances which would exclude any suspicion of an intention to make evidence to be used at the trial. With respect as to whether death arose out of and in the course of decedent's employment, the court noted that if an employee is doing what is an incident to, or hazard of, his his employment, in the course of which he is injured, the act is connected with his employment in such manner as to make his injury compensable, When an individual is away from home and lodging in a hotel, preparing to eat, going to or returning from a meal, that individual, as an employee, is performing an act incident to his employment unless he steps aside from his employment for personal reasons. Such employee, while away from home, in furthering his employer's interest is employed day and night. Thus going to and from the restaurant for the purpose of eating was an incident to decedent's employment as a necessary process of ministering to his personal needs.

CLAIMANTS IN THE MATTER OF THE DEATH OF LEO W. BENNETT v.
DURANGO FURNITURE MART, INDUSTRIAL COMMISSION
and STATE COMPENSATION INSURANCE FUND

136 Colo.
310 P. (2) 494

I.C.No. 1-234-475
ACCIDENT BY OVER-EXERTION
EVIDENCE TO SUPPORT AWARD
HEART FAILURE

INDEX NO. 474
JUDGMENT AFFIRMED

OPINION BY JUSTICE KNAUSS

Denial of a death claim by the Industrial Commission was affirmed in the district court and by the Supreme Court.

Decedent was employed for 7 years by respondent to do manual labor described as medium to heavy and which involved handling items of great bulk and weight up to 300 pounds.

On the date of his death the decedent delivered two items, one weighing 75 pounds and one weighing 55 pounds, as he was driving by the delivery place on his way home shortly before quitting time. He received assistance in carrying the heavier item from his truck to the house but he carried the lighter item alone for a distance of some 50 feet. Before leaving the delivery site to continue homeward, the claimant remarked about having a stuffy feeling in his chest. When he arrived home he collapsed in his truck and died a few hours later from a massive posterior myocardial infarction. The court found that there was sufficient evidence before the Referee to support the conclusion that there was no unusual effort, overexertion, accidential strain, or injury sustained by the decedent. An accident arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Industrial Commission findings when supported by competent evidence are binding upon the courts. In the absence of misapprehension of law to facts, it is peculiarly within the province of the Referee and the Industrial Commission to determine conflicting inferences that may be drawn from facts such as were established in this case.

LEE WILLIAMS AND INDUSTRIAL COMMISSION
NEW AMSTERDAM CASUALTY COMPANY and ORMAND R. WEST

136 Colo.
319 P. (2) 1078

I.C.No. 1-214-216
HEARSAY EVIDENCE
VALID MARRIAGE PRESUMED
RULES OF EVIDENCE

INDEX NO. 475
JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

OPINION BY JUSTICE MOORE

The Referee denied the death claim which was reversed by the district court and also was reversed by the Supreme Court The question of dependency is the sole contention in this case. The widow, without objection, showed performance of a marriage ceremony (her third) with decedent during 1941 and that she was living with him at the time of death. Respondent showed two previous marriages, the first of which ended in divorce before the second was contracted. The second marriage ended in voluntary separation and respondents, over hearsay objection, introduced an ex parte statement of the second husband which tended to show that no divorce had been secured by either party after the second marriage. The Supreme Court held that the statement, without the maker being subject to cross examination, was pure hearsay, since it sought to prove the truth of an assertion therein contained. The Industrial Commission is not bound to observe "common law or statutory rules of evidence" before it to assess or deny liability. This statement was pure hearsay evidence, neither probative, nor competent. The Supreme Court expressly disapproved of previous decisions, holding that Industrial Commission awards could not be reversed because of hearsay evidence, Further, the proof of a marriage ceremony gives rise to a presumption of its validity and that presumption may be overcome only by introduction of competent probative evidence to the contrary. Where the Referee orders a more detailed application for review and grants additional time to prepare such application, the added time cannot work as a default and forfeiture of claimant's right to review.

INDUSTRIAL COMMISSION, J. B. MONTGOMERY, INC. AND TRANSPORT INDEMNITY COMPANY v.
MINNIE MILDRED HAVENS, CAROL JEAN HAVENS, BY HER MOTHER AND NEXT FRIEND, MINNIE MILDRED HAVENS, AND SANDRA SUE HAVENS, BY HER MOTHER AND NEXT FRIEND, MINNIE MILDRED HAVENS

136 Colo.
314 P. (2) 698

I.C. No. 1-219-940
CIRCUMSTANTIAL EVIDENCE
HEART CASE-OVER-EXERTION
PRIMA FACIE CASE ON INFERENCE
UNDISPUTED FACTS; QUESTION OF LAW

INDEX NO. 476
JUDGMENT AFFIRMED

OPINION BY JUSTICE SUTTON

This concerns a death claim denied by the Industrial Commission, which was reversed in the district court, which, in turn, was affirmed by the Supreme Court.

The decedent, newly employed, was required to unload, with help, a truckload of some 10 tons of merchandise in ton lots. During the course of his work a loaded handcar became loose and struck his knee knocking him backwards. Some two hours after completing his unloading task he was found dead of what the coroner certified to be coronary occlusion. This certification was made without performance of an autopsy. There was no evidence of a "heart condition" and claimants introduced no evidence of "overexertion" nor did respondent show there was "no overexertion." There was no medical evidence establishing a causal relationship between "overexertion" and the heart attack. The court found that a coroner's certificate was prima facie proof of coronary occlusion and that, combined with a recital of events preceding death, was a prima facie case of death by "overexertion". Where there are undisputed facts, the question is one of law and not of fact findings within the province of the Industrial Commission. The court cited the circumstance of hard work and the blow from the handcar as being sufficient

upon which to make a conclusion of "overexertion" and thus a causal connection between occurrence and the death. This will stand in the absence of negativing evidence to the contrary. Industrial Commission awards cannot be sustained as the result of speculation, conjecture, or evidence not in the record. The respondents MUST rebut claimant's prima facie case.

CONCURRING OPINION:

Circumstantial evidence is sufficient to make a prima facie case and may be based upon reasonable inferences to be drawn from reasonable probabilities flowing from the evidence. Medical evidence, while desirable, is not essential.

DISSENTING OPINION:

Claimant's right to compensation cannot be sustained unless the evidence establishes that the injury is proximately caused by an accident arising out of and in the course of his employment. The majority opinion is based upon a failure of evidence as to whether "overexertion" results in coronary occlusion and, of itself, is based upon what could have and not what did cause death.

CURTIS H. MILLER, MINOR, INDIVIDUALLY AND BY HIS MOTHER, FRANCES N. MILLER, HIS NEXT FRIEND OF HIS CHOOSING v. THE DENVER POST, INC. A CORPORATION; STATE COMPENSATION INSURANCE FUND AND INDUSTRIAL COMMISSION

136 Colo.
321 P. (2) 661

I.C.No. 1-258-952
"LITTLE MERCHANTS" CONTRACT
EMPLOYEE-EMPLOYER
JURISDICTION

INDEX NO. 477
JUDGMENT AFFIRMED

OPINION BY JUSTICE DAY

The Industrial Commission denied an award, affirmed by the district court and the Supreme Court.

Claimant, a minor, delivered newspapers for the respondent employer under a "Little Merchants" contract. While preparing to receive papers for delivery at one of the respondent's distribution points, claimant received a head injury through the act of another delivery boy. The second boy had taken a piece of equipment belonging to the claimant, in fun, he, together with other delivery boys, ran into some empty lots adjacent to the distribution center.

The Claimant pursued these fellow delivery boys demanding return of his papers, and was injured by the efforts of the other boys to prevent recovery of his personal equipment. The boys were supervised at the time, if at all, by a delivery boy slightly older than themselves.

The court was called up to decide whether the Referee had proceeded properly upon two points presented at hearing. First, was the delivery boy an employee of the respondent newspaper? Second, did his injury arise out of and in the course of his employment? No finding was made at a hearing as to point 1, but it was assumed for the purpose of deciding point 2 that the boy was an employee. On point 2 the claim was denied as not having arisen out of and in the course of the claimant's employment. The Supreme Court found that the evidence and the law sustained a finding that the claimant had stepped aside from his employment and that the risk was not peculiar to his employment, if any. The finding that one essential point was lacking would not create good law nor determine a case to make an additional finding. Such a determination as of the first point by the Supreme Court would be only dictum and no and no determination in any manner.

DISSENT BY JUSTICE FRANTZ

Essentially the dissent holds that the relationship of employer and employee must first be determined before it can be decided whether the injury occurred in the course of employment. In other words, jurisdiction must be determined before deciding the merits of a claim. Jurisdiction, further, cannot be conferred by consent, nor can it be assumed, as in this case, it must be found as a fact before proceeding.

RICHARD G. LYTTLE and INDUSTRIAL COMMISSION v. STATE COMPENSATION INSURANCE FUND and COLORADO GAME AND FISH DEPARTMENT

136 Colo.
322 P. (2) 1049

I.C.No. 1-230-312
PUBLIC EMPLOYEE - NON SALARIED
OUTSIDE EARNINGS
ACCIDENTAL INJURY

INDEX NO. 478
JUDGMENT REVERSED AND CAUSED REMANDED WITH DIRECTIONS

OPINION BY JUSTICE MOORE

The district court reversed the Industrial Commission and was, in turn, reversed by the Supreme Court.

The claimant was injured by a hit and run driver on a Denver street after leaving a restaurant while in the city on official business for the Game and Fish Commission for the State of Colorado. The claimant was a non-salaried member of the Game and Fish Commission and resided in Meeker, Colorado where he edited and published a newspaper. During the afternoon of the day he was injured the claimant participated in continuous business meetings relative to the Commission business and upon conclusion retired to a Denver restaurant in the company of other Commission employees.

The Industrial Commission found the claimant to have been injured in an accident arising out of and in the course of his employment and awarded compensation for temporary total disability at the maximum rate, which award was based upon his newspaper income.

The Supreme Court in reversing the district court found that "public employee" as statutorily defined does not require that such person be paid a salary for the service performed and, when injured, such employee's compensation rate is determined to be the statutory minimum rate of compensation (modification of Industrial Commission order in this case). It was specifically found that the newspaper earnings, or other outside earnings, should be excluded in consideration of this case and similar cases.

The court also found that the accident arose out of and in the course of Alexander Film Company vs. Industrial Commission, 319 P (2) 1074.

THE INDUSTRIAL COMMISSION OF COLORADO, STATE COMPENSATION INSURANCE FUND and R.B."DICK" WILSON,INC. v. CLARENCE H. HORNER

136 Colo.
325 P. (2) 698

I.C.No. 1-182-768
HEART CASE - STRAIN OR OVEREXERTION

INDEX NO 479
JUDGMENT REVERSED

OPINION BY JUSTICE DAY

The district court reversed the Industrial Commission and was, in turn, reversed by the Supreme Court.

The claimant in this case sought compensation for a heart attack which he claimed arose from his work. Testimony showed that he had frequently worked 7 days per week driving an oil truck as many as three intercity trips per day. On the two days pertinent to this matter, the claimant hauled only two loads one day and no loads on the second day when he drove intra field trips. On the two days in question, the claimant did not do anything out of the ordinary, nor anything that could be construed as an overexertion or strain. The heart attack occurred some nine days later when an electrocardiogram disclosed that he had an anterio-laterial myocardial infarction. A previous electrocardiogram on or about the time of his last work did not disclose a cardiac condition.

The Supreme Court sustained a finding that the claimant failed to show accidental strain or overexertion which is necessary to qualify a heart attack as an industrial accident. There is no causal connection whatsoever between the onset of the heart attack and any unusual or extraordinary strain or overexertion amounting to an industrial accident.

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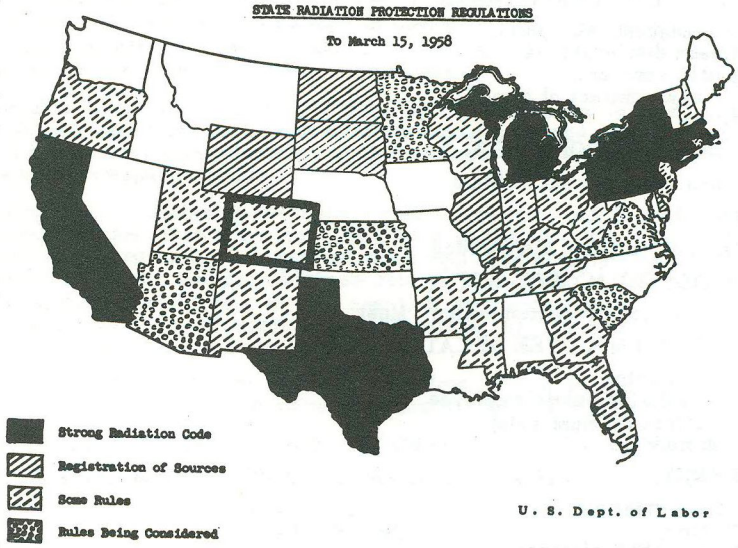
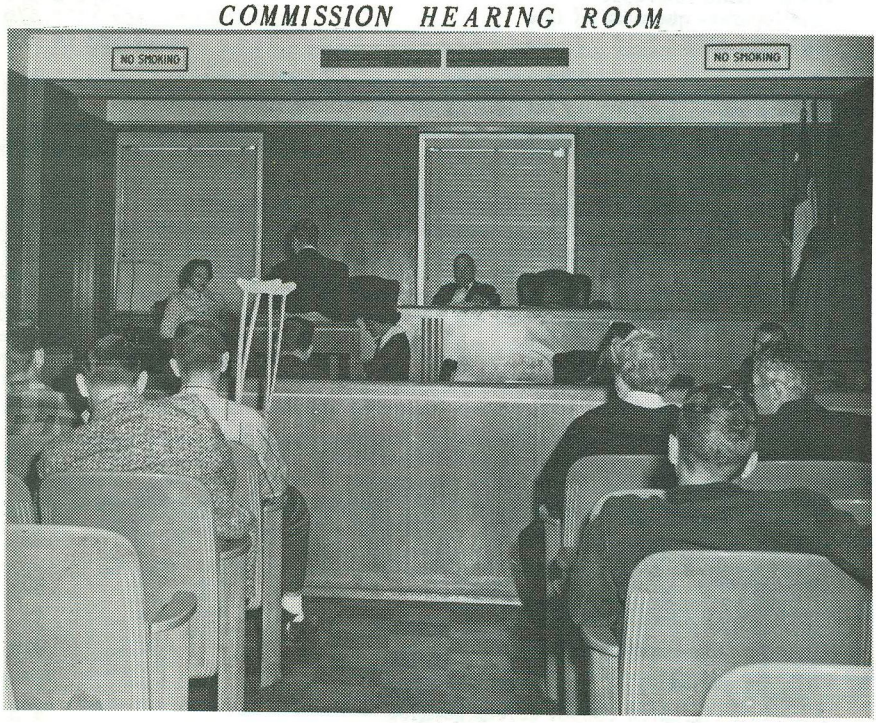


COMMISSION HEARING ROOM

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