

**OPINION  
60-295**

January 4, 1960 (OPINION)

WORKMEN'S COMPENSATION

RE: Boiler Inspector - General Requirement - Exception

This is in reply to your request for an opinion on chapter 65-12 of the 1957 Supplement to the N.D.R.C. of 1943. The main question apparently is the meaning of the word "in" as found in subsection 3 of section 65-1204 which provides as follows:

GENERAL REQUIREMENT. . . . Nothing in this Act (chapter) shall be construed to apply to:

. . . .

3. Boilers carrying a pressure of not more than fifteen pounds per square inch which are equipped with safety devices approved by the bureau unless located in theatres, schools, hospitals, licensed homes for the aged, orphanages or publicly owned buildings."

In connection with this you advise that there are some locations within this state where such boilers are not actually in such buildings. In these instances the boilers are located in another building some distance away from the actual buildings referred to in this subsection; for example, under the school laundry or the gymnasium.

The term "in" has many meanings, but apparently as used here it denotes a situation or position with respect to its surroundings, encompassment or enclosure. It has also been held that "in" in its usual significance and popular use means enclosed or surrounded by limits as in a room (134 So. 690). It also denotes situation or position with respect to a surrounding, encompassment, or enclosure (133 N.E. 2d. 369).

From the simple import of the word "in" it would appear that such boiler under subsection 3 would have to be located physically in the buildings so named. However, the Act in which this language is found is considered to be for the safety and public good and is classified as remedial legislation. It is also observed that the language in question is an exception to an exclusion. As such it is to be liberally construed to accomplish its purpose.

The question whether such boilers as stated above come within the provisions of the Act is largely one of fact. If such boiler is located in or about a public building, the explosion of which would cause harm to the occupants of such building (schools, hospitals, etc.), then it would be deemed to be constructively in the building. A boiler located under a building would be in the building for the purpose of the Act. However, where a boiler is located in a building (not designated in subsection 3) and distantly removed from the building (designated in the Act), and where an explosion would only

in a very remote way cause harm to the occupants, then it would no longer be considered constructively in such building.

It is our opinion that a boiler located outside of the building (such boiler and building as designated in subsection 3), but connected to and servicing such building and within such close proximity so that an explosion would either cause direct harm to the occupants or set into operation a chain of events causing harm to the occupants, it would be considered constructively in such building. The boiler, however, must be connected to and must serve such building.

In this connection the term "school or schools" embody more than just the classroom. It includes gymnasiums and other buildings comprising the entire school.

LESLIE R. BURGUM

Attorney General