

LABOR:--Section 13267, R. S. Mo. 1929, providing for the building of shelter sheds by railroads, having been declared unconstitutional by the Federal Court, this provision cannot be enforced.

3-13

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March 12, 1934.

Mrs. Mary Edna Cruzen,  
Commissioner of Labor,  
Jefferson City, Missouri.

Dear Mrs. Cruzen:

We are acknowledging receipt of your letter in which you inquire as follows:

"Has the Labor and Industrial Inspection Department the right to enforce Railroads to build shelter sheds in accordance with Section 13267 under the following conditions?"

The St. Louis San Francisco Railroad Company writes as follows:

'As to Section 13267 -- It is our opinion that a building is not required as the provisions of this section are not applicable where ordinary light repairs are required, and by the term light repairs is meant such as can be made to cars in switching yards in a short time. In fact, in less time than would be required in switching such car or cars to repair building.'

Upon investigation this department finds that it takes, in many instances, longer than one-half hour to repair these cars."

Section 13267, R. S. Mo. 1929, provides as follows:

"Every person, firm, corporation or receiver of such person, firm or corporation engaged within this state in the construction or repairing of passenger or freight cars or car trucks used in the transportation of passengers or freight by rail, shall erect and maintain a building or buildings at every point or place within this state where such construction or repairing is done, and where six or more men are regularly employed on such work. The building or buildings provided for in this section shall be so constructed

and equipped as to fully protect all employes engaged in such construction or repair work from exposure to cold, rain and sleet, snow and all inclement weather during the hours of employment of such employes, providing that the provisions of this article shall not apply where ordinary light repairs are required. The term, light repairs, as used in this article shall be such repairs as can be made to cars in switching yard in thirty minutes or less, or which may be made in less time than would be required to switch such car or cars to the repair building provided for in this article."

The above section, together with Section 13268, R. S. No. 1929, which provides the penalty for the violation of Section 13267, is commonly called the "Car Shed Act," and was passed by the Legislature in 1917. In 1922 an injunction suit was brought by the Wabash Railroad Company in the Federal Court, before a three-judge Court, to enjoin the enforcement of this Act. The Court held in the case of Wabash Railroad Company v. O'Bryan, 285 Fed. 583, that the Act was unconstitutional and enjoined the prosecuting attorney of Randolph County from the enforcement of the Sections. The Court says at page 586:

"It is obvious that persons against whom the provisions of the act are aimed might erect a building or buildings for the purposes and uses of this act, and yet find themselves amenable to prosecution and liable to be fined a maximum of \$500 a day, because in the view of some court or some jury the building erected did not 'fully protect all employes engaged in construction and repair work from exposure to cold, rain, sleet, snow and all inclement weather.' 'What,' said Judge Booth, in a similar case touching a similar statute, 'is the standard of guilt? When is it fixed, and by whom? The words 'rain and snow' are hardly definite enough in a criminal statute. The words 'heat and cold' are so elastic in their meaning as to cover the whole range of temperature. The words 'inclement weather' are equally indefinite. What is meant by 'Inclement weather?' Will a fog or mist come within the language? Will wind be included? It is surely necessary that limitations shall be placed on all of these terms. But who is to supply the limitations, the employer, or the employe, or the court

or the jury? The Legislature is the only proper authority to define a statutory crime against the state. This power cannot be delegated to individuals, to courts, or juries.' Chicago, etc., Ry. Co., v. Railroad, etc., Com., 280 Fed. l. c. 399.

So, also, may similar criticism, for that the language is indefinite, uncertain, and obscure, be directed against the proviso in the act, which relieves an alleged offender, if so it be, that the repairs may be done in 30 minutes or less, or in less time than would be required to move the car needing repairs from the yards to the car repair shed. Who is to guess as to these things? The ability to guess correctly makes up the difference between guilt and innocence. Railroad yards differ in size, and employes differ in ability and in the rapidity with which they work. The situation of the car needing repairs, or the location of it in the train, or in the yards, might be such in some cases as to require only 5 minutes to move it into the car repair shed, and under other conditions and situations such removal might require an hour or more. Yet some one must correctly estimate these differing elements, under peril of prosecution and fine. If he guesses right, he is innocent; if he guess wrong, he is guilty of a misdemeanor. But we need go no further into this; the lack of definiteness and certainty is too plain for argument."

"It follows that (since, in our opinion, the act is, for the reasons stated, unconstitutional, and it ought not to be and cannot be enforced) the motion to dismiss should be overruled, and a temporary injunction should be issued, as prayed in the Bill of complaint."

In view of the foregoing decision, we do not believe it is possible to compel railroad companies to build shelter sheds, as provided for in Section 13267. Section 13268 provides the penalty, but the Court above held that the Act was too indefinite to support a criminal prosecution, and there being no way to prosecute the Company for failure to build the shelter shed, we do not see how this Section can be enforced.

It is therefore the opinion of this Department

Mrs. Mary Edna Cruzen,

-4-

March 12, 1934.

that in view of the case above cited, you cannot compel  
railroads to build shelter sheds, as provided for in  
Section 13267, R. S. Mo. 1929 above.

Very truly yours,

FRANK W. HAYES,  
Assistant Attorney General.

APPROVED:

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Attorney General.

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