

LABOR DEPARTMENT:-Under Section 13219, R. S. Mo. 1929, whether shelter sheds built by railroads are within section is purely question of fact.

3-22
March 30, 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 inspect and collect fees for car sheds such as provided by railroads as a shelter for protection against inclement weather?"

I have the following communication from the St. Louis San Francisco Railway Company under date of February 13th.

'An enclosing inspection certificate covering inspection of the car shed at our North Side Car Shop, Springfield, Mo., Feb. 3rd, which calls for inspection fee of \$4.00.

It is the opinion of our Legal Department that the statute providing for inspection of buildings and shops would not apply in this instance. This is merely a shelter for protection against inclement weather and cannot be construed as a building or shop as generally understood, and the statute, to-wit, Section 13219 of the R. S. of Mo. 1929, is not in our opinion applicable to this car shed, and we respectfully ask that you have the certificate cancelled.'

May I have your opinion on this matter as soon as possible, as there seems to be quite a controversy over this question."

Section 13219, R. S. Mo. 1929, provides: "For the inspection of every building or shop in which three or less persons are employed or found at work, the sum of fifty cents." Then follows various provisions regulating the rates for the inspection of buildings and shops in which larger numbers of

employees are found at work. Whether or not you are entitled to collect an inspection fee for a shelter house built for the protection of employees depends upon whether or not the shelter house can be declared to be a "building or shop." You do not state how such shelter houses are constructed and our knowledge of their construction is so meager that we cannot determine whether they could be declared to be a building or shop. It strikes us that whether any structure can be declared a building or shop, under the terms of this Section, is a matter of fact and depends upon how they are constructed, and must always be a question of degree. In 9 C. J. page 685, among other things, a building is defined as follows:

"Any structure with walls and a roof; in the nature of a house built where it is to stand, which has a capacity to contain, and is designed for the habitation of man or animals, or the sheltering of property; a structure or edifice inclosing a space within its walls and usually covered with a roof, such as a house, a church, a shop, a barn, or a shed. ***As commonly understood, a house for residence, business or public use, or for shelter of animals or storage of goods, and imports a structure of considerable size and intended to be permanent or at least to endure for a considerable time. Taken in its broadest sense it can mean only an erection intended for use and occupation as a habitation, or for some purpose of trade, manufacture, ornament, or use, constituting a fabric or edifice, such as a house, a store, a church, a shed. What is a building must always be a question of degree."

In 36 Cyc. page 431, a shop is defined as:

"A building inside of which a mechanic carries on his work; *** any building or room used for carrying on any trade or business adapted to be carried on in a building or room and employing a stock in trade; *** a place in which a mechanic pursues his trade***."

As stated above, what is a building is purely a question of degree. Whether the shelter sheds, as built by the railroad, are buildings or shops, is purely a question of fact. We are not familiar with how they are constructed and as pointed out to you in an opinion a few days ago, the Federal Court held that the statute requiring their construction was too indefinite in its terms as to the construction of the sheds to support a criminal prosecution. The statute is, therefore, to indefinite

to apprise us of the type of sheds constructed. It occurs to us, however, that it was not the intention of Section 13219 to require inspection fees of temporary structures or structures loosely thrown together for the purpose of serving a temporary purpose. We believe that the general intent of the Act was to cover buildings and shops of permanent and substantial character where persons are regularly employed. Sometimes it is difficult to say with definiteness just where the line of demarcation is, but upon the facts as they appear from your inquiry, and the general purpose of the statute as we interpret it, we are inclined to be of the opinion that a temporary shelter shed was not intended to be within the Act. We say this advisably because we do not have before us the character of construction and assume that it is a structure which is very loosely built and is not a complete structure, and is a place wherein persons are only temporarily employed at various times. In any event, whether this shed or any other shed is a building or shop within the meaning of the Act, is purely a question of fact.

We are therefore of the opinion that Section 13219, providing for inspection and inspection fees was only intended to apply to buildings and shops of permanent and substantial nature wherein people are regularly employed, and that it would not apply to loosely and incompletely built sheds, such as apparently shelter sheds are, wherein people work for a short time at various intervals.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S