

COMMISSIONER OF LABOR: Has power to administer oaths or affirmations, to examine witnesses where he finds them and to take and preserve evidence, all provided Commissioner request information relative to his duties. Such evidence inadmissible in criminal prosecution except as admission.

October 24, 1939

Mr. Earl H. Shackelford
Commissioner of Labor and
Industrial Inspection
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for our opinion dated September 21, 1939, which is in the following terms:

"The question does the Commissioner under the provisions of this section have the power to hold hearings and examine witnesses in an effort to ascertain or secure definite information as to whether or not there has been a violation of the provisions of the labor laws of Missouri, and may such evidence be used in the prosecution of violations?"

There are two statutory methods by which the Commissioner of Labor and Industrial Inspection, hereinafter referred to as the Commissioner, can obtain information.

One is provided by Sections 13184, 13185 and 13186, Article II, Chapter 95, R. S. Missouri, 1929, Mo. Sta. Ann., pages 4766 and 4767. Section 13184 in part provides:

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"The commissioner * * * is hereby directed to collect information * * * to carry out the objects of the department as set forth in section 13179, and is hereby authorized to furnish suitable blanks * * * *."

Section 13185, in part provides:

"It shall be the duty of every owner, * * * of any factory, foundry or machine shop or other manufacturing establishment * * * to report annually, * * * to the commissioner * * *."

Section 13186, in part provides:

"The commissioner * * * is hereby authorized to furnish suitable blanks to the owner, * * * to enable said owner, * * * to intelligently comply with the provisions of Section 13185 of this article, and any such owner * * * who shall neglect or refuse to comply with the provisions of this article, or shall untruthfully answer any question or questions put to him by the Commissioner, in a circular or otherwise in furtherance of the provisions of sections 13184 and 13185, shall be deemed guilty of a misdemeanor, * * * *." (Underscoring ours)

Section 13186 by its terms is in aid of Sections 13184 and 13185.

The other method by which the Commissioner can obtain information, and which is the subject of this opinion, is provided by Sections 13181 and 13183, Article I, Chapter 95, R. S. Missouri, 1929, Mo. St. Ann., pages 4765 and 4766.

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Section 13181, in part provides:

"The commissioner shall have power to administer oaths or affirmations, to examine witnesses and to take and preserve evidence; * * *."

The extent of the power given by Section 13181 is measured by the extent to which it can be enforced. The power of subpoena to compel the attendance of witnesses is an inherent power of courts (State ex rel. Rudolph v. Ryan, 327 Mo. 728, 38 S. W. (2d) 717), and not an inherent power by the common law of said commissioner. It follows that the only way in which the Commissioner can be given the power of subpoena to compel attendance of witnesses is by statute. Section 13181 does not do so.

The power of subpoena in Article III of the same chapter 95 containing the labor laws was by Sections 13199 and 13200, Mo. St. Ann., pages 4772 and 4773, expressly given to the Board of Mediation and Arbitration. A statute directing a thing to be done by a specific officer or body (said Board) implies that it shall not be done by a different officer or body (said Commission); 25 R.C.L. page 229 and cases cited; 59 C. J. page 984 and cases cited.

We believe that if the Legislature had intended for the Commissioner to have the power to subpoena witnesses, it would have made an express grant of said power to him also, as it did in the case of the Board of Mediation and Arbitration (See in Re Klein, 245 N Y S 486, 487, 138 Misc. 282).

Moreover, the grant of specific powers and methods in Section 13181 implies the intent of the Legislature toward the exclusion of other powers and methods, and that is particularly so because said section 13181 is creative, introducing a new rule. 2 Sutherland Statutory Construction (2d Ed.) pages 919, 920, Section 492; page 916, section 491.

Upon the foregoing authority, in our view, the Commissioner can administer oaths, examine witnesses and take and preserve evidence, but, in the sense of compelling the attendance of witnesses he cannot "hold hearings".

However, Section 13183, R. S. Missouri, 1929, Mo. St. Ann. page 4766, provides:

"Any owner, operator, manager or lessee of any mine, factory, workshop, warehouse, elevator, foundry, machine shop or other manufacturing establishment, or any other employer of labor, or agent or employe of such owner, operator, manager or lessee, who shall refuse to said commissioner, when requested by him, any statistical or other information relative to his duties which may be in their possession or under their control, shall, for every such neglect or refusal, be deemed guilty of a misdemeanor, and shall, on conviction, be fined in a sum not less than twenty-five not more than one hundred dollars."
(Underscoring ours).

The location of said section 13183 in the law, being but one section removed from Section 13181, is one circumstance showing it referred to Section 13181 and is intended by the Legislature to aid the Commissioner in taking evidence under the authority of Section 13181. Unless this is true, Section 13183 would be unnecessary and virtually meaningless, because the other authority of the Commissioner to obtain information, in said Section 13184, by furnishing blanks, is aided by Section 13186, which particularly refers to information obtained in circulars, in blanks (by Section 13184) or in reports (by Section 13185). It is not presumed that the Legislature intended any part of a statute to be without meaning. 2 Sutherland Statutory Construction (2d) page 919, Section 491. It is to be presumed that

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the Legislature intended every section of the act to have a meaning and to be effective. State v. Daues (1929), 14 S. W. (2d) 990, 1002, 321 Mo. 1126. In the light of the foregoing principles, we believe Section 13183 has the effect of aiding the Commissioner in enforcing the rights granted by Section 13181.

Said Section 13183 does not grant the power of subpoena to compel attendance of witnesses at a hearing. Lacking that power the Commissioner in order to exercise his rights under both Sections 13181 and 13183, has no alternative but to go where the witness is. There, the Commissioner can hold a hearing. There, witnesses "who shall refuse to said Commissioner, when requested by him, any statistical or other information relative to his duties which may be in their possession or under their control," (Section 13183) are guilty of a misdemeanor. The refusal of a witness properly before the Commissioner to take an oath or affirmation, that being an essential part of the examination, or to be examined by the Commissioner, or to answer questions by him, would constitute such refusal as would be a misdemeanor under Section 13183, subject to the three following qualifications.

First. The power of the Commissioner granted by Section 13181, can be enforced only against persons, witnesses, within the enumerations in Section 13183. It is not possible in this opinion to say who might fall within those enumerations. It may be stated generally, that the general words in Section 13183 include persons and things of the same general kind or nature or class as those specifically enumerated. This is in keeping with the ejusdem generis rule, which is especially applicable to the penal statutes (59 C. J. page 982), and which was stated in the following terms by the Supreme Court of Missouri in State ex rel. Goodloe, et al. against Wurdeman, 227 S. W. 64, l. c. 67, 286 Mo. 153:

"It is a familiar rule of statutory construction that where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase should be construed to refer to things of the same kind."

Second. The power of the Commissioner, granted by Section 13181, can be enforced only in connection with requests by him for the kind of information described in Section 13183; and that is "information relative to his duties." That kind of information is only information of violations (of the labor laws) which it is the duty of the Commissioner to prosecute or to cause to be prosecuted. This would seem to answer the question whether the Commissioner by holding a hearing may seek information as to whether there has been a violation of the labor laws of Missouri. Violations which it is the duty of the Commissioner to prosecute or cause to be prosecuted are too numerous to discuss here. They will be found in the following places.

Section 13191, R. S. Missouri, 1929, Mo. St. Ann. page 4769 requires the Commissioner to prosecute violations of three other sections, all in Article III, Chapter 95.

Section 13213, R. S. Missouri, 1929, Mo. St. Ann. page 4777, requires the Commissioner to prosecute violations of two other sections, all in Article IV, Chapter 95.

Section 13263, R. S. Missouri, 1929, Article VI, Chapter 95, Mo. St. Ann. page 4808, requires the Commissioner to prosecute all violations of the provisions of that article, which are misdemeanors. Said article VI contains 47 sections.

Section 13246, R. S. Missouri, 1929, Mo. St. Ann. page 4802, Article VI, Chapter 95, requires the Commissioner to prosecute violations of other laws for the protection of employees.

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Section 13306, Article XII, Chapter 95, R. S. Missouri, 1929, Mo. St. Ann. page 4823, requires the Commissioner to prosecute or to cause the prosecution of all violations of the provisions of that article, which are misdemeanors. Said Article XII contains six other sections with numerous provisions.

Third. A witness may refuse to answer on the constitutional ground that his answer may tend to incriminate him, under Article II, Section 23 of the Missouri Constitution which in part provides:

"That no person shall be compelled to testify against himself in a criminal cause, * * * * *"

"The immunity afforded by the constitution is broad enough to protect him against self crimination before any tribunal, in any proceeding."
State v. Jacob Adam Young, 119 Mo. 495, 1. c. 520, 24 S. W. 1038.

The request for opinion asks whether evidence adduced at a Commissioner's hearing is admissible in a criminal proceeding for violation of the labor laws.

"The admissions which are received against defendant in a criminal prosecution include those which are made by him in civil actions or proceedings, such as those contained in his testimony, verified pleadings and bankruptcy schedules; * * * * *" 16 C. J. and cases cited.

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Statements made voluntarily and under oath, by a party on a motion for a continuance, may be given in evidence against him if pertinent to the issue. State v. Chris Young, 12 S. W. 879, 99 Mo. 666.

On the strength of that analogous authority, one's voluntary testimony at the Commissioner's hearing may be given in evidence as an admission against him in a criminal prosecution for violation of the labor laws.

Other evidence adduced at the Commissioner's hearing would be inadmissible in a criminal prosecution, because Article II, Section 22 of the Constitution of Missouri provides that the accused shall have the right "to meet the witnesses against him face to face."

Generally, the evidence here considered would not be within any of the exceptions to the above constitutional provision, of which a dying declaration or testimony of a witness since deceased are examples.

The fundamental propositions embodied in the above quoted section of the Missouri Constitution, and the exceptions thereto, are fully discussed in State v. McO'Elenis, 24 Mo. 402.

CONCLUSION.

The Commissioner of Labor and Industrial Inspection has the power to hold hearings where he finds the witnesses and to examine witnesses in an effort to ascertain or secure definite information as to whether or not there has been a violation of the provisions of the labor laws of Missouri, provided it is the duty of the Commissioner to prose-

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cute or to cause a prosecution of such violations.
Such evidence may not be used in a criminal prosecution except as an admission.

Respectfully submitted

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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