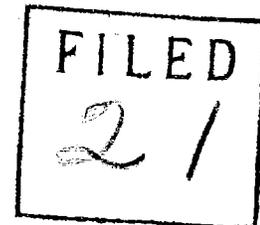


LABOR: Female employees engaged in hotel work not subject to provisions of Section 10171, R. S. Mo. 1939.

August 21, 1941.

8-25

Mr. George N. Davis
Prosecuting Attorney
Macon County
Macon, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of August 18th, wherein you state as follows:

"The Department of Labor has insisted that the Jefferson Hotel, which is an ordinary hotel operated on the European plan, is subject to the provisions of Section 10171.

"Mr. Meador, the proprietor of the hotel, has a written opinion from Mr. Waldo Edwards, an attorney of this city, telling him that the management of the Jefferson Hotel is not subject nor required to operate under and obey the provisions of said section.

"I am writing you to ask you your interpretation as to whether or not the hotel comes within any of the classifications set out in that section, so that female workers may be employed no more than nine hours during any one day, nor more than fifty-four hours during one week at the hotel."

Section 10171, R. S. Mo. 1939, provides the number of hours that female employees may be permitted to work in certain occupations:

"No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establishment, or factory, workshop, laundry, bakery, restaurant, or any place of amusement, or to do any stenographic or clerical work of any character in any of the divers kinds of establishments and places of industry, hereinabove described, or by any person, firm or corporation engaged in any express or transportation or public utility business, or by any common carrier, or by any public institution, incorporated or unincorporated, in this state, more than nine hours during any one day, or more than fifty-four hours during any one week: Provided, that operators of canning or packing plants in rural communities, or in cities of less than ten thousand inhabitants wherein perishable farm products are canned, or packed, shall be exempt from the provisions of this section for a number of days not to exceed ninety in any one year: Provided further, that nothing in this section shall be construed and understood to apply to telephone companies; and be it further provided, that the provisions of this section shall not apply to towns or cities having a population of 3,000 inhabitants or less."

If a hotel operates a restaurant, whether the same be under the European or American plan, the female workers employed therein would be specifically within the terms of the above section. The question then is whether female employees engaged strictly in hotel work would come within the terms of the above section?

It is obvious that a hotel would not come within the meaning of a factory, workshop, bakery, place of amusement, manufacturing or mechanical establishment. This leaves

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for consideration the possibility of whether a hotel comes within the meaning of a "mercantile establishment."

In the case of Hotchkiss v. District of Columbia, 44 App. Cases, Dist. of Columbia 73, l. c. 79, the court in defining "mercantile establishment" said:

"The term 'mercantile establishment' may be said to refer to a place where the buying and selling of articles of merchandise as an employment is conducted. 'It implies operations conducted with a view of realizing the profits which come from skilful purchase, barter, speculation, and sale.' Graham v. Hendricks, 22 La. Ann. 523."

It is apparent that a hotel is not a place where the buying and selling of articles of merchandise as an employment is conducted, and, consequently, a hotel cannot be said to be a mercantile establishment.

From the foregoing we are of the opinion that a hotel does not come within the provisions of Section 10171, R. S. No. 1939, requiring that female workers be not employed more than nine hours during any one day nor more than fifty-four hours during any one week.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

MW:EG