

PENITENTIARY: Watchmen employed by Industrial Department
HOURS OF LABOR: of Missouri State Penitentiary not within
WATCHMEN: provisions of Section 9039, R. S. Mo. 1939,
setting maximum daily and weekly hours of
work.

February 16, 1950



Mr. H. P. Andrae
Representative of Cole County
Jefferson City, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department, reading as follows:

"As Representative of Cole County, Missouri, I have been requested on numerous occasions by certain employees of the Industrial Department of the Missouri State Penitentiary to introduce a bill in the Legislature limiting the hours of work to eight hours per day or a maximum of fifty-six hours per week for watchmen employed by the Industrial Department of the institution as is provided in the above mentioned Section for guards and turnkeys. (Section 9039, R. S. Mo. 1939) Such watchmen are now required to work twelve hours per day, seven days per week.

"However, I have never been able to convince myself of the necessity for such action as it appears probable that it was the intention of the Legislature in enacting Section 9039, Revised Statutes of Missouri, 1939, to include guards, turnkeys and any other person or persons performing similar or like services, which should include night watchmen employed in the Industrial Department of the institution, under the provisions of this statute.

"I will, therefore, appreciate your opinion as to whether or not under the terms of this statute watchmen in the Industrial Department of the Missouri

State Penitentiary are required to work more than eight hours per day, or fifty-six hours per week, or whether they are included within the provisions of that statute.

"I might further add that unquestionably the act of the 1945 Session of the Legislature, entitled 'State Merit System Act', Laws of Missouri, 1945, pages 1157 et seq. repealed by implication that provisions of the present Section 9039 would respect the payment of the salary provided therein. Moreover, Section 2b of the Merit System Act, found on page 1158, Laws of Missouri, 1945, specifically includes employees of the State Department of Corrections, and Section 15 of the Act, found on pages 1165 and 1166, Laws of Missouri, 1945, provide the method whereby a plan shall be provided for each of the various employees referred to in Section 2b of the Act. However, Section 9039 has not been repealed in its entirety by the Legislature.

"I will sincerely appreciate your furnishing me your opinion on this matter in order that I may be guided accordingly."

Section 9039, Revised Statutes of Missouri, 1939, provides in part as follows:

"All turnkeys and guards shall receive for their services the sum of one hundred thirty-five dollars per month and no guard or turnkey or any other person or persons performing similar or like services shall be compelled to work more than eight hours per day, and any such employee shall not work more than fifty-six hours per week, and all watchmen shall receive one hundred and fifteen dollars (\$115.00) per month; and provided further, that nothing in this section shall apply to any penal institution in this State other than the Penitentiary. Nothing herein, however, shall be construed as to prevent the commission of the department of penal institutions from suspending the operation of

such rule fixing the time of regular daily service of employees in case of emergencies, and said commission shall have full power to determine the existence and duration of such emergencies, and its finding in respect thereto shall not be subject to review by any other power."

Turnkey is defined as follows in Funk and Wagnall's New Standard Dictionary:

"one who has charge of the keys of prison doors; a keeper, jailer."

Guards at the penitentiary, of course, are those who have the convicts under their supervision. We believe, therefore, that the persons performing services similar or like those of a turnkey or guard are those persons who are in charge of and supervise convicts.

We are informed by the Superintendent of Industries of the Missouri State Penitentiary that the watchmen employed by such division do not supervise or have charge of any convicts, but their duties consist only in keeping a watch over the physical properties of the penitentiary and in maintaining a guard against fires and other hazards.

Therefore, we believe that the watchmen employed by the Industrial Department of the Missouri State Penitentiary do not perform services similar to or like the services performed by turnkeys and guards, and that the limitation relating to maximum daily and weekly hours of work of turnkeys and guards and persons performing similar or like services does not apply to such watchmen. We believe this view to be borne out by the fact that in the sentence in Section 9039 quoted supra, which makes a provision for maximum daily and weekly hours worked by turnkeys and guards and those performing similar or like services, that "watchmen" are mentioned and no reference is made limiting the daily or weekly hours to be worked by such watchmen.

Since we have ruled that "watchmen" are not affected by the limitation on daily or weekly hours of work, contained in Section 9039, we deem it unnecessary to discuss Section 32 of the Merit System Act, Laws of Missouri, 1945, p. 1157, providing that the regulations shall provide for the hours of work, holidays, attendance and leaves of absence in the various classes of positions subject to the Merit System Act.

Mr. H. P. Andrae

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CONCLUSION

It is the opinion of this department that the limitation upon maximum hours to be worked daily or weekly at the Missouri State Penitentiary by turnkeys or guards, or persons performing similar or like services, does not apply to watchmen employed by the Industrial Department of the Missouri State Penitentiary.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General