

LABOR:

Employees of a nursing home or "rest haven" does not fall within Section 290.040, RSMo 1949, Hours of labor of female employees.

April 25, 1951

5-1-51



Mr. L. L. Duncan, Director
Division of Industrial Inspection
Department of Labor and Industrial
Relations
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office which reads as follows:

"On numerous occasions this division has been requested to advise as to whether or not nursing homes or 'rest havens', which a great many of the places are called, which employ female help or nurses come under the jurisdiction of Section 7815, Laws of Missouri, 1913, - Hours of Labor of Female Employees."

Section 7815, Laws of Missouri 1913, which you refer to is now Section 290.040, RSMo 1949, and provides:

"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, herein 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

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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."

A well settled rule of statutory construction is that as stated in *State ex inf. Conkling, ex rel. v. Sweaney*, 270 Mo. 685, at page 692, "That the expression of one thing is the exclusion of another."

Before the employees of a "rest haven" described in your question can be within the application of Section 290.040, RSMo 1949, they must be found within its terms.

A nursing home or "rest haven" is not a "manufacturing, mechanical or mercantile" establishment because nothing is manufactured or sold and it is clearly not a "factory, laundry, restaurant, or place of amusement." A "workshop" is defined in Vol. 45, Words and Phrases, page 534 as follows:

"The term workshop, * * *, means any premises, room, or place, not a mill or factory, wherein manual labor is exercised for purposes of cleaning or adapting for sale any article or part thereof, * * *."

A nursing home as here considered lacks the elements of being one wherein manual labor is exercised for purposes of cleaning or adapting for sale any article or part of an article.

Clearly, such a home is not engaged in any "express or transportation or public utility business." Not being a "common carrier" the only other category is that of "public institution."

A nursing home is not within the term "public institution" and is shown by the following found in the case of *Allen v. American Life and Accident Insurance Co.*, 119 S.W. (2d) 450, at page 453:

"* * *Such records of a private hospital are admissible in evidence because the statute requires them to be made and kept,

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but this does not convert the private hospital into a public institution or make its employees public employees appointed and accredited by governmental authority and acting as such under their official oaths. Such employees are still private employees of a private institution. * * *

(Emphasis ours.)


CONCLUSION

Therefore the opinion of this department is that female employees of a nursing home or "rest haven" do not fall within the purview of Section 290.040, RSMo 1949, prohibiting certain establishments from employing female labor for a longer period than nine hours in one day or fifty-four hours in one week.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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