

WOMEN: Nurses employed by manufacturing and
LABOR: mercantile establishments not within
INDUSTRIAL INSPECTION: provisions of statute relating to
HOURS OF WORK: maximum hours of work by women.



July 25, 1951

7-25-51

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

Dear Sir:

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

"On numerous occasions during the past three months the writer has been asked about Section 290.040, RSMo 1949, as to whether or not it applies to industrial nurses, such nurses employed by manufacturing and mercantile establishments and who are usually required to do general first aid work, render professional service of medical or surgical nature under the direction of a physician, and maintain medical and clerical records."

Section 290.040, RSMo 1949, provides as follows:

"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

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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."

In order to determine whether or not industrial nurses are included within the provisions of such statute, we must determine whether or not the nurses are performing "manual or physical work" or doing any "stenographic or clerical work" in any of the kinds of establishments and places described in such statute. We believe that the work done by nurses should be classed as "professional" rather than "manual or physical."

In the case of Mayor and City Council of Baltimore v. Smith, 177 Atl. 902, the Court of Appeals of Maryland held that a nurse employed in the Baltimore City Hospital was not a "manual or industrial worker." The court said l.c. 905:

"It is obvious that a hospital is not an industrial enterprise, and that a trained nurse, whether classified as pupil, practical, or registered, is, in the course of her vocational employment, a professional, and not a manual or industrial, worker. This conclusion is in harmony with common usage of the terms."

* * * * *

"It is argued that, although a trained practical nurse, she was within the act because the performance of her duties as a nurse required her to scrub and clean tables, chairs, and other articles for use in the wards and to

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prepare beds for the patients and to incur the risk of infections and contagious diseases. The answer to this is that the manual labor mentioned is simply incidental to the profession of nursing and does not destroy its principal and essential quality, which is the special and professional knowledge, technical skill, and experience that comes from the instruction, training, and exercise of the nurse's mental faculties."

It is our view, therefore, that an industrial nurse does not engage in "manual or physical work."

We assume from the information given in your opinion request that all of the records maintained by the nurses about whom you inquire are the records of their work and are a part thereof. Since the keeping of the records is merely incidental to the employment as a nurse, we believe it to be clear that the nurse is not engaged in stenographic or clerical work for the establishment for which she works, but is merely performing that which is necessary in her employment as a nurse.

It is our view, therefore, that an industrial nurse who keeps medical and clerical records in connection with her occupation is not engaged in stenographic or clerical work for the establishment for which she works.

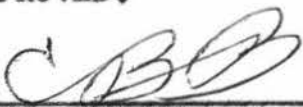
CONCLUSION

It is the opinion of this department that Section 290.040, RSMo 1949, does not apply to industrial nurses employed by manufacturing and mercantile establishments, where the work done by such nurses is to render first aid work, render professional service of medical or surgical nature under the direction of a physician, and maintain medical and clerical records.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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