

STATE HOSPITAL
ELEEMOSYNARY INSTITUTIONS:
WOMEN:
LABOR:
HOURS OF LABOR:

State hospitals are not "public institutions" within the meaning of Section 290.040, RSMo 1949.



April 17, 1953

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

Dear Mr. Duncan:

We render herewith an opinion on your request of February 27, 1953, which request is as follows:

"On numerous occasions this department has been asked to interpret as to whether or not female State employees employed at the various State hospitals came under Section 290.040, Hours of Labor of female employees.

"This department requests an opinion as to whether or not they do come within the jurisdiction of this above mentioned section."

The section to which you refer, Section 290.040, RSMo 1949, reads 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

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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."

The basic question involved in your request is whether peculiar problems raised by your request, the term "public institution, incorporated and unincorporated," as contemplated by the statute.

Although state hospitals appear to fit snugly into the judicial definitions of the term "public institution," it is a settled rule of statutory construction that a state and its agencies are not to be considered within the purview of a statute unless an intention to include them is clearly manifest. The rule is thus stated in 59 C.J., Statutes, Section 653, page 1103:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. * * *"

The rule should be especially applicable in construing a penal statute such as Section 290.040, RSMo 1949.

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The use of the phrase "public institution, incorporated or unincorporated," is not sufficiently clear and definite clearly to manifest a legislative intent to include state hospitals therein.

CONCLUSION

It is the opinion of this office that female employees of state hospitals in Missouri do not come within the provisions of Section 290.040, RSMo 1949.

The foregoing opinion, which I hereby approved, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

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