

LABOR: Female employee of bank covered by  
WOMEN: maximum hours of female employment law.  
HOURS OF LABOR:  
FEMALE EMPLOYEES:

OPINION NO. 318  
Opinion 58 (1968)

June 18, 1968

Honorable Jack Yocom  
Prosecuting Attorney  
Greene County  
Springfield, Missouri 65802



Dear Mr. Yocom:

This is in response to your request for an opinion on the applicability of the female maximum hours of employment law to banking institutions. For convenience we set out in full the statute in question, Section 290.040, RSMo Cum. Supp. 1967).

"1. Hours of labor of female employees. 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 diverse 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 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

Honorable Jack Yocom

number of days not to exceed ninety in any one year, and operators of floral establishments shall be exempted from the provisions of this section on certain holidays, namely: Mothers Day, Valentines Day, Easter and Christmas and on occasions for funerals and weddings, not to exceed three days in any calendar week or a total of 30 days in any calendar year, and telephone companies shall be exempt from the nine hours during any one day provision of this section.

2. Nothing in this section shall be construed to apply to telephone companies serving under seven hundred fifty stations, or to telephone companies in cases of emergency." (Emphasis added)

We agree with the indications contained in your request that the key phrase of the statute is "public institution".

Initially we observe that remedial statutes are given a liberal construction and, more particularly, that hours of employment statutes are given a broad construction in furtherance of their beneficial purpose (United States v. Pitcairn, 23 F. Supp. 242 (ED Mo. 1938)). A more elaborate discussion of this principle of statutory construction is contained in an earlier opinion of our office regarding this same statute, a copy of which is herewith enclosed (Opinion No. 90, December 8, 1941, to Mr. Orville Traylor).

As originally enacted the prohibition on hours of female employment was as follows:

"No female shall be employed or permitted to work in any manufacturing or mercantile establishment, laundry or restaurant in any cities of this state which may now or hereafter contain more than 5,000 inhabitants before five o'clock in the morning or after ten o'clock in the evening of any day, nor for more than fifty-four hours in any one week. \* \* \*" (Laws 1909, p. 616; Sec. 7815, RSMo 1909).

The statute was amended in 1913 to substantially its present form and particularly so as to include employment in a "public

Honorable Jack Yocom

institution, incorporated or unincorporated,..." (Laws 1913, Page 400). It is our opinion that the Missouri Assembly then intended the phrase "public institution" to include banks chartered by either the United States or the State and thereafter regulated by one or both of these governments (§362.420, RSMo 1959; L. 1915, p. 102).

A California Court has stated that banks, although organized and financed by private individuals for personal gain, are in a sense "public institutions" subject to legislative regulation, examination and control. (Franklin vs. Bank of America, 88 P. 2d 790, 796 [Cal.] To like effect, 9 CJS, Banks and Banking, §1, p. 28 and § 5, p. 32). Since 1915 there has been a legislative prohibition on the establishment of private, or unincorporated, banks in Missouri (Laws 1915, Page 157; now Section 362.015, RSMo 1959). Our Supreme Court has noted the substantial interest which the public has in all banks:

"\* \* \*The banking business is coupled with great public interest. It is subject to strict regulation, visitation and supervision.  
\* \* \* \* \* \* \* \* \* \*

'Banks are in effect fiscal agents of the government. They are essential to the business interests of our state. They operate under government supervision. The public has a keen interest in their successful operation and in their facilities for public service. They aim to afford the public a place for the safe-keeping of one's money. While regulation must be and is strict and exacting, unreasonable and unjust rules inconsistent with the efficient and safe conduct of the bank are not to be imposed.' Rodgers v. Bankers' National Bank, 179 Minn. 197, loc. cit. 203, 229 N.W. 90, loc. cit. 92." (Lucas vs. Central Missouri Trust Company, 162 SW 2d, 569, 577, En banc 1942; l.c. 577).

We feel that the characterization of banks today in Missouri, since the abolition of "private banks", can be expressed in the language of an early New York Court:

Honorable Jack Yocom

"The proper phrase for a banker who exercises in his business no more than the rights and privileges common to all men, as distinguished from a bank or association or person who has taken advantage of the provisions of statutes, and by a compliance with the conditions of them as privileges not natural and common, is not 'individual banker'; it is 'private banker'. He is private in his business inasmuch as he may conduct it as he pleases within the law, and is not subject to visitation or scrutiny by the state; while those who have started a banking business under an enabling statute are public, inasmuch as the public has given them the right, and has the power to demand securities and have reports and to make inquiry into the business and how it is conducted." (People vs. Doty, 30 N. Y. 225, L.c. 233) Emphasis supplied.

In summary, we believe that a "liberal construction", or a construction that gives the words used their most extensive meaning but without doing violence to the language (82 C.J.S. Statutes, §§ 311, 388, pp. 530, 919-921), of the phrase "public institution" in Section 290.040 warrants the conclusion that banking institutions are included therein.

Had the Missouri legislature intended "public institutions" to mean those of a governmental nature we believe a different phrase could and would have been used. The legislature has, over the years, used a variety of statutorily defined phrases to describe governmental bodies, but in no instance that we can find have they so used or defined the phrase "public institution".

e.g.:

"Civil subdivision"	(L. 1921, 1st Ex. Sess., p. 131; now § 226.010 (1), RSMo 1959)
"Municipal Corporation"	(L. 1911, p. 362, § 232.010, RSMo 1949)
"Municipality"	(L. 1913, p. 556, now §386.020(16) RSMo 1959; L. 1921, 1st Ex. Sess. p. 131, now § 226.010(5), RSMo 1959;

Honorable Jack Yocom

L. 1921, 1st Ex. Sess. p. 76;  
now § 301.010(16), RSMo 1959;  
L. 1951, p. 300, now § 99.320  
(12), RSMo 1959; L. 1949, p.  
602, now § 141.220(7), RSMo  
1959; L. 1941, p. 493, now  
§ 91.830(3), RSMo 1959)

"Political  
Subdivision(s)"

(L. 1941, p. 490, now §70.120(2),  
RSMo 1959; L. 1947, p. 401, now  
§70.210(2), RSMo 1959; L. 1951,  
p. 537, now §44.010(6), RSMo  
Cum. Supp. 1967; L. 1943, p. 670  
now §142.010(8); L. 1951, p. 788,  
now §105.300(8), RSMo Cum. Supp.  
1967; L. 1965, p. 227, §105.145(1),  
RSMo Cum Supp. 1967)

"Public body"

(L. 1951, p. 300, now §99.320(15),  
RSMo Cum. Supp. 1967)

"Taxing authority"

(L. 1923, p. 1029, now §141.220(14),  
RSMo. 1959)

When referring to the State, or one or more of its departments  
or agencies as an employer, the legislature has been un-  
mistakably clear in its reference.

e.g.:

Voluntary retirement or health plans-

"Whenever the employees of any state department,  
division or agency ..... " (L. 1951, §33.103,  
RSMo 1959)

State Merit System

"A system of personnel administration based on  
merit principles.... is established for all  
offices, positions and employees of the state  
department of public health and welfare, the  
state department of corrections, the personnel  
division of the department of business and  
administration and the division of employment  
security of the department of labor and  
industrial relations, except that the following  
offices and positions of these agencies are not

Honorable Jack Yocom

subject to this law .....

\* \* \* \* \*

(7) Patients or inmates in State charitable, penal and correctional institutions who may also be employees in the institutions;

(8) Persons employed in an internship capacity in a state department or institution.....

(Section 36.030, 1959, L. 1945, p. 1157)

State Employees' Retirement System

" \* \* \* \* \*

(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations.....

\* \* \* \* \* " (Section 104.310, RSMo Cum. Supp. 1967; L. 1957, p. 706)

Workmen's Compensation

"1. The word 'employer' as used in this chapter shall be construed to mean:

\* \* \* \* \*

(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation or 'quasi' corporation, or cities under special charter, or under the commission form of government, which elects to accept this chapter by law or ordinance.

\* \* \* \* \* " (§287.030, RSMo 1959; L. 1925, p. 379)

We are impelled to the conclusion that the legislature did not intend governmental employers to be within the statute, having in mind the rule of statutory construction that:

"The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute,

Honorable Jack Yocom

however general and comprehensive the language of the act may be, unless intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication." (82 CJS, Statutes, § 317, p. 554).

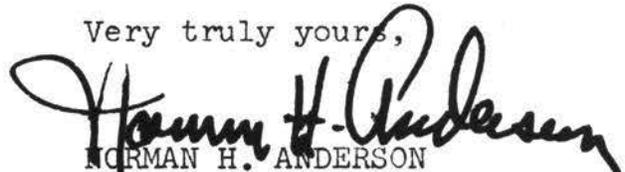
It was substantially for this reason that this office previously took the position that a state hospital was not a "public institution" and thus not within the female maximum hours of employment statute (See Annotations to VAMS, §290.040).

CONCLUSION

It is the opinion of this office that a female employee performing stenographic and clerical duties in a state chartered bank is subject to the maximum hours of female employment law. (Sec. 290.040, RSMo Cum. Supp. 1967).

The foregoing opinion, which I hereby approve, was prepared by my Assistant Louren R. Wood.

Very truly yours,

  
NORMAN H. ANDERSON  
Attorney General