

LABOR AND INDUSTRIAL  
INSPECTION DEPARTMENT:

Right to inspect office buildings;  
firms employing one or more per-  
sons in cities of less than 3,000;  
where only owners work; railroad  
and freight depots; gasoline filling  
stations; hotels; fraternity houses;  
collection of unpaid license fees.

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*1319 - 91*

July 10, 1933. <sup>7.26</sup>



Mrs. Mary Edna Cruzen,  
Labor and Industrial Commissioner,  
Jefferson City, Missouri.

Dear Mrs. Cruzen:

We are acknowledging receipt of ten inquiries from you regarding your Department, and have consolidated them into one reply for the purpose of answering. Your inquiries are as follows:

- (1) "Has the Department of Labor and Industrial Inspection any authority to inspect different offices in office buildings?"
- (2) "Section 6782 R. S. of Missouri, 1919 states 'It shall be the duty of the industrial inspector, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings etc.' Please give me your interpretation of an office building.

In your judgment does this mean each separate office in an office building and should a fee be charged for each separate office in these office buildings - or does office building, as used in Sec. 6782 R. S. Mo. 1919 mean an inspection of the building alone, and should a fee be charged on the basis of the total number of employees employed in the several offices in that building?"

- (3) "Has the Department of Labor and Industrial Inspection authority to collect inspection fees from a firm employing one or more persons in cities of less than 3,000?"

For instance: - Monroe city with a population of 1820 sends us a list of 73 business houses all eligible to be inspected, and further -

The K. C. Chamber of Commerce reports to this department that small cities are asking factories to come and locate there in order to avoid inspection fees - high taxes etc."

- (4) "Has the Department of Labor and Industrial Inspection

authority to collect an inspection fee from any firm where only the owner is working, and no employees are working with him?"

- (5) "Has the Department of Labor and Industrial Inspection the authority to collect inspection dues from all Railroad and Freight Depots - even if in small towns."
- (6) "Will you please give me a list of places to be inspected by the Labor and Industrial Inspection Department of the state of Missouri, as set forth in Section 13218?"
- (7) "Has the Labor and Industrial Inspection Department the authority to inspect gasoline filling stations?"
- (8) "Has the Department of Labor and Industrial Inspection any authority to inspect hotels?"
- (9) "Has the Department of Labor and Industrial Inspection authority to inspect Fraternity Houses where young people are living?"
- (10) "Has the Department of Labor and Industrial Inspection the authority to collect unpaid license fees during the term of Amanda D. Hargis, former commissioner?"

Section 13218 R. S. Mo. 1929, regulating the powers and duties of the Commissioner is as follows:

"The state commissioner of labor and industrial inspection may divide the state into districts, assign one or more deputy inspectors to each district, and may, at his discretion, change or transfer them from one district to another. It shall be the duty of the commissioner, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops. The last inspection shall be completed on or before the first day of October of each year, and the commissioner shall enforce all laws relating to the inspection of the establishments enumerated heretofore in this section, and prosecute all persons for violating the same. Any municipal ordinance relating to said establishments or their inspection shall be enforced by the commissioner. The commissioner, his assistants and deputy inspectors,

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may administer oaths and take affidavits in matters concerning the enforcement of the various inspection laws relating to these establishments: Provided, that the provision of this section shall not apply to mercantile establishments that employ less than ten persons that are located in towns and cities that have three thousand inhabitants or less."

(1) and (2) Your first and second inquiries above refer to the inspection of office buildings. You desire interpretation of office buildings, and information as to whether the inspection of office buildings includes the right to inspect the various offices which go to make up the building.

In answer to your inquiry, it is the opinion of this Department that the term "office building," as used in Section 13218 R. S. No. 1929 above, means an inspection of the building alone, and that the fee therefor should be charged on the basis of the number of employees employed by the company, individual, or individuals owning the office building. You may not take into consideration in fixing the fee for this inspection the total number of employees employed by the various tenants who rent office space in an office building.

You inquire whether you have a right to inspect the different offices located in the building. It is the opinion of this Department that you do have the right to inspect the different offices in an office building where the businesses carried on in the offices are those named in Section 13218. When the offices in the office building are leased, the space rented belongs to the lessee for the period of the lease, and the owner of the building usually has no jurisdiction over it. The space rented belongs to the lessee and becomes separate and distinct from the building itself. Any number of different businesses may and naturally are carried on in the various offices of the large office buildings and when the businesses are those defined in Section 13218, they may be inspected the same as if they occupied an individual building of their own.

(3) In your 3rd inquiry you inquire as to the right to collect inspection fees of a firm employing one or more persons, in cities of less than 3,000.

The proviso at the end of Section 13218 above is as follows:

"Provided, that the provisions of this Section shall not apply to mercantile establishments that employ less than ten persons that are located in towns and cities which have 3,000 inhabitants or less."

Under the above proviso, mercantile establishments that

employ less than ten persons and are located in towns of 3,000 or less cannot be inspected. Mercantile establishments in towns of 3,000 or less may be inspected where they employ ten or more employees. All of the other places listed in Section 13218 may be inspected if they are located in towns of 3,000 or less, if they have one or more employees. The proviso of the above Act only exempts from inspection mercantile establishments employing less than ten and not the other businesses listed therein though they be located in towns of 3,000 or less.

Section 13210 R. S. Mo. 1929, provides that no female employe shall be employed more than nine hours during any one day, or more than fifty-four hours during any one week. The Section further provides, "that the provisions of this Section shall not apply to towns or cities having a population of 3,000 inhabitants or less." The above Section, therefore, regulating the hours of labor of female employees, does not apply to towns or cities having a population of 3,000 inhabitants or less, and your Department would have no right to charge an inspection fee in towns of 3,000 or less where your inspection was made for the purpose of enforcing the hours of labor for female employees, as provided in Section 13210. This Section, however, does not destroy your right to make inspections in towns of 3,000 inhabitants or less under Section 13218, as we have pointed out above.

(4) In your 4th inquiry you ask whether an inspection fee may be required from a firm where only the owner is working and who has no employees.

Section 13219 R. S. Mo. 1929, provides, among other things, as follows:

"The commissioner provided for in this article shall be entitled to demand and receive from the owner, superintendent, manager or other person in charge of every establishment inspected, as provided for by law, the following fee for each inspection made in accordance with the provisions of articles 4, 5, 6, 8, 9, and 10, chapter 95 R. S. 1929, or elsewhere authorized or required of said inspector by law to be made: For the inspection of every building or shop in which three or less persons are employed or found at work, the sum of fifty cents." \* \* \*

Chapter 95, of which the above section is a part, covers the legislation of this state relating to the relation between employers and employees. The Act was passed for the benefit of the employee and not for the benefit of the employer. In other words, the evil sought to be remedied was working conditions impressed upon the employees by the employers, and was not intended as a regulation of employers themselves when they

employed no others in their business. It must be assumed that employers themselves need no restriction or regulation for the purpose of providing suitable working conditions for themselves. It is only where they have under their control other employees that the state becomes interested and seeks to protect those employees against unfavorable conditions imposed upon them by their employers. The above section imposes a fee where there are three or less persons employed, but under the view taken by us the employer or owner of the business is not an employee within the meaning of this section. It is, therefore, our opinion that no inspection fee can be collected from a business which has no employees and which is operated by the owner himself.

(5) In your 5th inquiry you inquire regarding your right to inspect all Railroad and freight depots, even in small towns. In Section 13218 R. S. Mo. 1929, "freight depots" are specifically named. There is no exception in the statute which exempts those in small towns from inspection. The only exception as to small towns is that of mercantile establishments employing less than ten persons and located in cities of 3,000 or less are exempted. If the Railroad Depot is operated solely as a passenger depot, we do not believe that inspection can be made of it under Section 13218. As to Freight Depots, there is no limitation as to the size of the town in which they are located.

(6) In your 6th inquiry you desire a list of places to be inspected, as set forth in Section 13218 R. S. Mo. 1929, which Section has been quoted above and will not be quoted again at this place. The Section provides for an inspection of "all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops." After the enumeration of the various places to be inspected the Section includes, "all other manufacturing, mechanical and mercantile establishments and workshops." It is the opinion of this Department that the Legislature intended that the places enumerated be subject to inspection and by such enumeration did not intend that every place where one or more employees may work would be subject to inspection. The places enumerated, however, cover practically all of the well-known places where employees work under such conditions as to require the protection of these statutes. We believe that unless the place sought to be inspected is a factory, warehouse, etc., or is a manufacturing, mechanical or mercantile establishment or workshop, that such places may not be inspected. We suggest that when a particular place is desired to be inspected and there is doubt in your mind as to whether you have the right to so inspect it, you make inquiry regarding the particular place. The terms of Section 13218



are so broad that a list of places to be inspected under the general terms of the Act would include most of the places wherein business activity is carried on.

(7) In your 7th inquiry you ask regarding your right to inspect gasoline filling stations. "Gasoline filling stations" are mercantile establishments under Section 13218. They, therefore, may be inspected by your Department where they are located in cities of over 3,000, if they employ at least one employee, but they may not be inspected in cities under 3,000 population excepting where such filling station employs ten or more persons.

(8) In your 8th inquiry, you desire to know whether you have authority to inspect hotels. Hotels are not listed specifically in Section 13218 nor do hotels come within the general classification of "manufacturing, mechanical and mercantile establishments and workshops." Not being specifically named or coming under the general classification, it is our opinion that it was not the intention of the Legislature that hotels should be subject to inspection. However, if any part of the hotel falls within the classifications named in Section 13218, as for example, "restaurants," then that portion of the hotel may be inspected by your Department.

(9) In your 9th inquiry you ask regarding your right to inspect fraternity houses. Fraternity houses are not named in Section 13218 specifically, nor do they come under the general classification of "manufacturing, mechanical and mercantile establishments and workshops." It is true that fraternity houses, as a general rule, have employees, but if the test is only whether or not there are employees, then it could as well be contended that your Department would have the right to inspect private homes because many homes have one or more employees. We do not believe it was the intention of the Legislature that inspection should be made of all places where employees are found. If such were true, few places, either public or private, would be exempt from inspection by your Department. We believe that it was the intention of the Legislature to confine inspection to the places enumerated in Section 13218. Fraternity houses do not come within any of the enumerated places and we, therefore, are of the opinion that you have no right to inspect fraternity houses.

(10) In your 10th inquiry you ask regarding your authority to collect unpaid license fees accruing during the term of your predecessor. Section 13190 R. S. Mo. 1929, provides as follows:

"No person, firm or corporation in this state shall open, operate or maintain an employment office or agency for hire, or where a fee is charged to either applicants for employment or for help, without first

obtaining a license for the same from the state commissioner of labor and industrial inspection." \* \* \*

Section 13191 R. S. No. 1929 provides as follows:

"It shall be the duty of the commissioner, or his deputies, agents or assistants, to enforce sections 13190 to 13193 inclusive. When informed of any violation, it shall be their duty to institute criminal proceedings for the enforcement of its penalties before any court of competent jurisdiction. Any person convicted of a violation of the provisions of said sections shall be deemed guilty of a misdemeanor, and shall be fined not less than fifty nor more than one hundred dollars for each offense, or be imprisoned in the county jail for a period not exceeding six months, or both."

Under the above Section the Legislature has made it a criminal offense to fail to pay license fees required in Section 13190 R. S. No. 1929. No provision is made in the Statutes for the collection of such license fees where the person has operated and failed to obtain such license and pay such fee. For the violation of Section 13190 the Legislature has provided a penal remedy. Where a penal remedy is provided in such cases as this, the courts hold that the penal remedy is exclusive and that for failure to pay the license fee a prosecution may result, but that a common law action will not lie to recover the amount due.

In State ex rel v. Dix, 159 M. A. 573, 576, the Court says:

"Beginning with the case of City of Carondelet v. Picot, 38 Mo. 125, and ending with State ex rel. v. Trust Co., 209 Mo. 1. c. 490, the courts of this state in an unbroken line of decisions have held that a tax is not a debt or in the nature of a debt but is an impost levied by government and that it is not founded on contract but operates *in invitum*. \* \* \* But further we said 'however the payment and collection and mode of collection of taxes, are necessarily regulated by statute, and if the statute names a remedy which may be fairly said to be exclusive no other can be had.' And a specified remedy will be held to be exclusive where no other is provided and the ordinance is entirely silent with respect of any other. The rule in this state is that where the statute or ordinance wholly fails to provide a remedy an implication arises that the legislative body intended that a civil suit at law would lie for the collection of the tax but where an adequate remedy is

Mrs. Mary Edna Cruzen,

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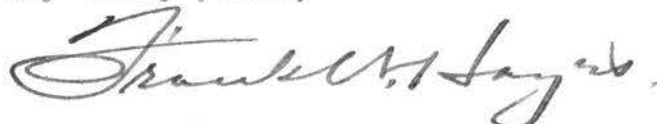
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provided the implication must be the other way. \* \* \*  
We think the penal remedy given in the ordinance  
was adequate and, therefore, exclusive."

The same rule is announced in *Luckey v. Kansas City*,  
169 N. A. 666 l. c. 671, and is stated as the majority rule  
in an annotation found in 5 A. L. R. 1312.

It is, therefore, the opinion of this Department  
that where persons have been permitted to operate without  
having to pay the license fee, that those fees may not now  
be collected by your Department. This, however, would not  
prevent criminal action being instituted against such  
violations if the statute of limitation has not barred such  
prosecution.

Very truly yours,



Assistant Attorney General.

APPROVED:

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Attorney General.

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