BUREAU OF LABOR: Under Section 13210 R. S. Mo. 1929, beauty shops are not included therein.

May 14, 1937.

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

Dear Mrs. Cruzen:

This department is in receipt of your request for an opinion which reads as follows:

> "Does the Labor and Industrial Inspection Department have the authority to inspect beauty parlors under Section 13218, and to enforce Section 13210?
>
> I am having quite a few complaints with reference to these establishments and would appreciate your kindness in rendering an opinion on same."

Section 13218 R. S. Missouri 1929, provides 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, 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."

Section 13210 R. S. Missouri 1929, states:

"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, hereinabove 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 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; and be it further provided, that the provisions of this section shall not apply to towns or cities having a population of 3,000 inhabitants or less."

In determining what employers are within the meaning of statutes regulating the hours of labor, it has been said that the statutes should be "read in the light of the general purpose of the Legislature in enacting them." Commonwealth vs. Riley 210 Mass. 387, 97 N.E. 368, Aff., 232 U.S. 671, 58 L. Ed. 788.

In 59 C. J. 984, it is said in Section 582:

> "Where a statute enumerates the things upon which it is to operate,* * *it is to be construed as excluding from its effect all those not expressly mentioned;"

As was said in State ex inf. Conkling ex rel. vs. Sweeney, 270 Mo. 685, l. c. 692, 195 S. W. 714:

> "To so hold would be to violate the well known canon of statutory construction, viz.: That the expression of one thing is the exclusion of another."

Therefore the right of the commissioner of labor to inspect a beauty parlor and to regulate the working hours of the women therein must be given by the statute.

As a definition of practitioner in such shops, we will take that given in Section 9090, R. S. Missouri 1929, which states:

> "* * *Any person who engages for compensation in any one or any combination of the following practices, to-wit: arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching, tinting, coloring or similar work upon the hair of any person by any means shall be construed to be practicing the occupation of a hairdresser. Any person who with hands or mechanical or electrical apparatuses or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams engages for compensation in any one or any combination of the following practices, to-wit, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work, upon the scalp, face, heck, arms, or bust or removing superfluous hair by means other than electricity about the body of any person shall be construed to be practicing the occupation of a cosmetologist or cosmetician. Any person who engages for compensation in the manicuring of nails shall be construed to be practicing the occupation of a manicurist."

In sections 13218 and 13210, supra, the only words which might grant authority to inspect and regulate beauty shops are those general terms "manufacturing, mechanical and mercantile establishments," the other terms being specific and definite as to their application.

We think it is apparent that a beauty parlor is not a manufacturing establishment. Nor is it a mercantile establishment. As was said in Cleve vs. Mazzoni (Ky.) 45 S.W. 88, "A barber shop is not a mercantile purpose", and in State ex rel. Garrison vs. Reeve, 103 Fla. 1204, 139 So. 817, it is stated:

> "We can find no reason to differentiate in the application of law between the trade* * *of the barber and the beauty culturist."

The question then is, whether a beauty shop is a mechanical establishment. We believe the rule is aptly stated in State vs. Crounse, 105 Neb. 672, 181 N.W. 562, in which a statute practically identical with section 13210 was under consideration. The Court said:

> "The definition of mechanical, as given by Webster's New International Dictionary is: '(1) Of, pertaining to, or concerned with, manual labor; engaged in manual labor; of the artisan class. (2) Of, pertaining to, or concerned with, machinery or mechanism; made or formed by a machine or with tools.'
>
> "The statute is not directed specifically at mechanical labor wherever the same may be performed, but at all labor performed by women in those institutions only which are to be classed as mechanical establishments. For the general purpose of the law, it was evidently deemed best by the lawmakers to describe in what establishments female labor should be regulated, rather than to attempt to regulate certain kinds of labor in all establishments. Almost all business establishments employ some mechanical element in their operations. The mere fact that machinery or mechanical appliances, or mechanical or manual labor, is used, or found to be employed, does not

> necessarily characterize the establishment as a mechanical establishment. It seems to us that, before the establishment can be said to be a mechanical establishment, the mechanical element must predominate. In such operations as mining, or in waterworks, where water is pumped and distributed to consumers, or in Laundries or repair shops, the mechanical element clearly does predominate, and the products of those enterprises can be readily said to be the products of mechanical effort. Such enterprises, though not manufacturing, would clearly be mechanical in their nature. Cowling vs. Zenith Iron Co. 65 Minn. 263, 33 L.R.A. 508, 60 Am. St. Rep. 471, 68 N.W. 48; Ward vs. Norton, 86 Kan. 906, 122 Pac. 881."

In view of the above rule it appears that a beauty parlor is not a mechanical establishment. While mechanical labor is used, such mechanical element does not predominate, as may be gleaned from the definition of beauty practitioner in Section 9090, supra.

Conclusion.

It is therefore the opinion of this department that the State Commissioner of Labor does not have the right, under section 13218, to inspect beauty shops, nor does section 13210, which restricts the hours of female employees, apply to women working in beauty shops.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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