LABOR COMMISSIONER: (1) City sanitariums, city hospitals etc., classed as public institutions within meaning of Section 13210, R. S. 1929; (2) Commissioner has no jurisdiction to make inspection of female employes in federal, state, city, county offices or on election boards.

February 17, 1938.

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Honorable Mary Edna Cruzen
Commissioner of Labor
Jefferson City, Missouri

Dear Mrs. Cruzen:

This Department acknowledges receipt of your letter of February 16th, wherein you request an opinion involving certain portions of Section 13210, R. S. Mo. 1929. The first paragraph of your letter is as follows:

> "On November 11, 1933, an opinion was handed down from your department prepared by Frank W. Hayes, Assistant Attorney-General, in which Section 13210, R. S. of Missouri 1929, was quoted and question asked 'If the provisions accepting the application of the provisions of the Section 13210 in towns or cities have a population of three thousand or less was constitutional.' In this opinion a review was made of the provisions of Section 13210 '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 cherical work of any character in any of the diverse kinds of establishments and places of industry wherein above 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, more than nine hours during any one day or more than fifty-four hours during any one week.'

For the sake of clarity we are answering your questions separately.

I.

> "The question has arisen 'Does this portion of Section 13210 apply to city sanitariums, city hospitals (colored and white), city infirmaries, isolation hospitals, girls and boys homes maintained by the city?'"

Your letter quotes the pertinent part of Section 13210, supra, and we shall not burden this opinion by again quoting same. The privisos and exceptions contained in said section do not affect the questions.

The Supreme Court of the United States in the decision of Commonwealth v. Riley, 232 U. S. 671, has said that in order to determine what employers are within the purview of statutes regulating the hours of laborers, the statutes should be read in the light of the general purpose of the Legislature in enacting them. Therefore, we are concerned with what the Legislature had in view in using the phrase "by any public institution." It appears to have a varied meaning and to the layman's mind includes any place which is sanctioned, operated, maintained or opened to the public by any governmental political division, such as State, county and city. However, we think the Legislature had in mind a more narrow or constricted meaning, such as contained in the case of Henderson v. Shreveport

Gas and Electric Co., 62 So. 616, 618, as follows:

> "A 'public institution' is one which is created and exists by law or public authority, e. g., an asylum, charity, college, university, school house, etc."

In Vol. 6, page 5793 of Words and Phrases, a "public institution" is defined as follows:

> "Public institutions are those which are created and exist by law or public authority, while private institutions are those which are created or established by private individuals for their own private purposes. Some public benefits or rights may result from the institutions of private individuals or associations. So, also, some private or individual rights may arise from public institutions. The only sensible distinction between public and private institutions are found in the authority by which, and the purposes for which, they are created and exist. Because, therefore, a corporation may fall under the denomination of private corporations in the artificial distinction between public and private corporations, it is none the less a public or political institution. Toledo Bank v. Bond, 1 Ohio St. 622, 642."

Applying these definitions to your question, we are of the opinion that city sanitariums, city hospitals,

city infirmaries, isolation hospitals, girls and boys homes maintained by the city, are to be classfied as public institutions within the meaning of Section 13210, supra, provided that the institutions herein mentioned are maintained, controlled or owned, governed and directed by the city.

II.

> "As this is a very important and urgent matter, I will appreciate an immediate reply which will set forth explicitly the places included in any public institution, incorporated or unincorporated. Further, could this by any chance cover women working in federal, state, city, county offices or on election boards?"

One of the well recognized canons of statutory construction is the latin expression expressio unius est exclusio alterius, which means in effect that where the statute enumerates the things upon which it is to operate it is to be construed as excluding all things not expressly mentioned. State ex inf. Conklin v. Sweeney, 270 Mo. 685.

Therefore, if female employes employed in Federal, State, city, county offices or election boards are to come within the purview of Section 13210, there must be language in said section which would clearly embrace such employes. We have read the statute carefully and finding no words, terms or language which could reasonably be interpreted to include such employes, we are of the opinion that you, as Labor Commissioner, have no jurisdiction to make any inspection of female employes employed in such offices or boards.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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