TELEPHONE EXCHANGES:
INDUSTRIAL INSPECTION:

A telephone exchange is not subject to industrial inspection, but associated activities collateral to the operation of the telephone exchange are subject to industrial inspection if they come within the compass of paragraph 2 of Section 291.060 RSMo 1949.

FILED
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September 8, 1955

Honorable L. L. Duncan
Director Division of Industrial Inspections
Department of Labor and Industrial Relations
Jefferson City, Missouri

Dear Sir:

Your request for an official opinion, dated June 29, 1955, reads as follows:

> "The writer would like very much to have an opinion from your office concerning whether or not it is permissible for the Division of Industrial Inspection, Department of Labor and Industrial Relations, to inspect and collect a fee from telephone companies operating in this State, according to Section 291.060."

Subsequently we wrote to you asking you to make your request somewhat more explicit, and on August 12, 1955, you wrote to us as follows:

> "With reference to your letter of August 11 concerning the above subject, the writer wishes this opinion to cover garages, warehouses, also buildings housing exchanges, or any other building owned or operated by a telephone company in which telephone employees are required to perform duties."

It is upon the basis of the above two letters that this opinion will be written. All statutory references, unless otherwise indicated, are to the RSMo 1949.

Paragraph 2 of Section 291.060 reads as follows:

> "1. The director of the division of 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.

> "2. It shall be the duty of the director, 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, bakeshops, 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 director 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 director."

It will be noted that the above enumerates those places which are to be inspected by your division. A place, to be subject to inspection, must come within one, at least, of the categories enumerated, or it must come within the classification of a manufacturing, mechanical and/or mercantile establishment and/or workshop.

We can begin by noting that, in and of itself, a "telephone company" is, primarily none of the things enumerated in the above paragraph of Section 291.060, for the simple reason that it is a "telephone company," or, to use a more exact term, a "telephone exchange," since the first term embraces the officers, the articles of incorporation, the charter, the franchise, et cetera, whereas, the second term is, more definitely, the physical property belonging to and operated by a "telephone company," which physical property alone could be the subject of industrial inspection. The second term, "telephone exchange," has thus been defined in the case of Western Union Telegraph Company v. American Bell Telephone Company, 105 Fed. 684, l.c. 696:

> "'A telephone exchange is an arrangement for putting up and maintaining wires, poles, and switch boards within a given area, with a central office, and the necessary operators to enable the individual hirers of telephones within that area to converse with each other.'"

On October 10, 1934, this department rendered an opinion construing what is now substantially paragraph 2 of Section 291.060, to Mary Edna Cruzen, Commissioner of Labor, Jefferson City, Missouri. In this opinion, on page 4 et seq., we stated:

> "It cannot be denied that the Legislature has failed in its specific enumeration to mention telephone companies. Therefore, applying the first rule of construction we must hold that the Legislature did not intend to include telephone companies, because the general words, 'all other manufacturing, mechanical and mercantile establishments and workshops,' must be construed in the light of the specific words and it cannot be said that telephone companies are similar enough to any of the words specified as to bring them within the statute. It must appear, therefore, that telephone companies are not included within the act under the first rule of construction since they are not specifically named and since telephone companies cannot fairly be said, even by the application of the principle of ejusdem generis, which is the technical name of the first rule, to come within the terms of the statute.
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> "Having disposed of the first rule of construction we must resort to the general words, 'all other manufacturing, mechanical and mercantile establishments and workshops,' and even assuming that they must be given their full meaning, unless it can be said that telephone companies are fairly within those general words, it must be held that telephone companies are not included even under the second rule of construction. We are of the opinion that telephone companies are not either manufacturing, mechanical or mercantile establishments within the general understanding of the meaning of those words. Mr. Yates seems to be of the opinion that they are mercantile establishments, but we are inclined to the view that mercantile establishments are those engaged in selling goods, wares and merchandise either at wholesale or retail. We understand that the substantial business of telephone companies is that of rendering service to their telephone subscribers. They are not engaged in selling goods, wares or merchandise either at wholesale or retail."

To the above-quoted portion of the Cruzen opinion, we subscribe, and hold that, since a "telephone exchange" is not specifically enumerated in paragraph 2 of Section 291.060, as being subject to industrial inspection, and since it does not come within the classification of a manufacturing, mechanical, and/or mercantile establishment and/or workshop, that a telephone exchange, as defined herein, is not subject to industrial inspection.

It is, however, a matter of common knowledge, of which we may take the equivalent of judicial notice, that telephone exchanges vary greatly in many respects, and that the single term, "telephone exchange," does not in all situations mean the same thing, thus making it difficult to speak of them in generalizations. For example, in hundreds of villages in this state the telephone exchange is housed in a single room of a dwelling house; it consists of the comparatively small amount of mechanical apparatus necessary to make the system function; and is never staffed by more than one operator at a time. At the other extreme are the hugh telephone exchanges in the cities of Kansas City and St. Louis.

For the reasons given above, that portion of the exchange which is a "telephone exchange," according to the definition of "telephone exchange" given in the Western Union Telegraph Company v. American Bell Telephone Company case cited above, is not subject to industrial inspection. But these very large exchanges, because of their size, necessitate associated activities to carry on the work of the exchange. The St. Louis Exchange, for example, has, in a building separate from its exchange, a garage for its motor vehicles. This garage has a personnel of several permanent, full-time employees. A garage is one of the places listed in paragraph 2, Section 291.060, supra, as being subject to industrial inspection. Can we say that this particular garage, because it is owned and operated by a telephone company, deals only with telephone company motor vehicles, and is not "public," is exempt from industrial inspection? We do not see that paragraph 2 of Section 291.060, supra, gives us any basis for making such a distinction, and it is, therefore, our opinion that such a garage is subject to industrial inspection.

We are further informed that the St. Louis Exchange also has a warehouse, with several full-time employees. We believe, likewise, that since paragraph 2 of Section 291.060 lists a "warehouse," as being subject to industrial inspection, that a warehouse, under these circumstances, is subject to industrial inspection.

We are further informed that up until a few years ago the St. Louis Exchange operated a restaurant mainly for the benefit of its employees, but to which the general public had access. Such restaurant, would, we believe, have been subject to industrial inspection for the reasons given above. The St. Louis Exchange, we are informed, is housed in a large building owned by the Southwestern Bell Telephone Company; which has many offices in which auditors, bookkeepers, clerks, stenographers, and executives are engaged in the business of running the business of the telephone company. Whether all of this building is occupied by telephone company employees, or whether part of it is leased to other businesses or to individuals we do not know, but in either case it could well be that this building would be properly classified as "an office building," as that term is used in paragraph 2 of Section 291.060. On this point we direct attention to the following excerpt from Prichard v. National Protective Insurance Company, 200 S.W. 540. At l.c. 544, the court stated:

> "The term 'office building' as used in the policy under consideration is not defined or limited in any manner. There is no adjudication by a Missouri court, or by any other court, called to our attention that defines the term 'office building.' According to the common parlance of the streets, we are 'on the loose' and are at liberty to formulate our own definition of the term if we should deem it advisable to do so. The difficulties attendant upon such an effort are obvious and we do not consider a definition practicable for application to all cases because of the divergent facts that might appear in any given case. Nor is there any need for definition because any one using such term can readily supply his own definition by specifically indicating the sense which it is intended to have. We are of opinion that where such a term is used, as in the present case, without qualification, its meaning and application are subject to any fair and reasonable interpretation consistent with the language used and with the facts and circumstances surrounding the parties at the time of the execution of the policy and at the time of the casualty. Under the facts of record, we hold that the Insurance Company is not entitled to any restricted meaning of the term 'office building' in the absence of any express limitation or exception, but that said term is one subject to latitude in meaning and that the court is entitled to accord to it a liberal construction in favor of the insured.* * *"

From all of the above we come to the conclusion, as stated, that a "telephone exchange," as defined above, is not subject to industrial inspection for the reasons given above, but that any associated activity collateral to the operation of the telephone exchange is subject to industrial inspection if it comes within the compass of paragraph 2 of Section 291.060. Examples of such activities, as we pointed out above, are the operation of garages, warehouses, restaurants, office buildings, et cetera.

The entire purpose of industrial inspection is to see that a place necessarily frequented by employees, and to which the public is invited or permitted to come, is made as safe as possible. Such being true, any distinction made between two identical operations simply upon the basis that one of them was operated by a telephone company, would be artificial and arbitrary, and would defeat the entire purpose of the industrial inspection law. For example, elevator operators at 1010 Pine Street, St. Louis, telephone employees who must of necessity use these elevators, and members of the general public who are forced to use these elevators in pursuit of their business, are as much entitled to the protection in elevator service which

Honorable L. L. Duncan

is afforded by industrial inspection as are elevator operators, employees, and members of the general public in any other place or situation.

CONCLUSION

It is the opinion of this department that a telephone exchange is not subject to industrial inspection, but that associated activities collateral to the operation of the telephone exchange are subject to industrial inspection, if they come within the compass of paragraph 2 of Section 291.060 RSMo 1949.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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