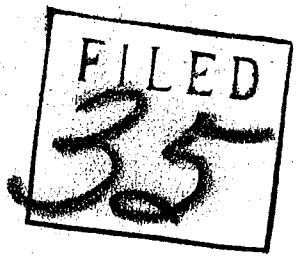
FEMALE EMPLOYEES: Section 290.040, RSMo 1949, is applicable to female employees working in what is in fact either a "restaurant," "laundry" or "snack shop."



September 22, 1954

Honorable Douglas W. Greene
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

> "I would appreciate receiving your opinion relative to the following application of Section 290.040, Revised Statutes of Missouri, 1949:
>
> "(a) Does the prohibition contained in Section 290.040 with respect to employment of female employees in excess of nine hours per day and 54 hours per week apply to the female employees of a restaurant, laundry, or 'snack shop' operated in connection with and as a part of an educational institution owned and operated by a religious organization?
>
> "(b) Does the prohibition above referred to apply as to stenographic or clerical work performed by female employees at an educational institution owned and operated by a religious organization where the major part of the stenographic or clerical work has to do with the general administration of the institution, but an incidental part of such stenographic or clerical work may have to do with the operation of a restaurant, laundry, or 'snack shop' forming a part of the educational institution?

Honorable Douglas W. Greene

> "The restaurant, laundry or 'snack shop' referred to above is maintained for the benefit of the students attending the educational institution."

In this opinion we have assumed that the "snack shop" referred to in your letter of inquiry is in fact a "restaurant." It is our understanding that the establishment does sell food and soft drinks to the public.

Section 290.040, RSMo 1949, referred to in your letter of inquiry, reads as follows:

> "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, 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 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." (Emphasis ours.)

The wording of the statute is clear and unambiguous and by its terms clearly prohibits the employment of females in the enumerated types of businesses for a longer period than nine hours during any one day and more than 54 hours during any one week. In the absence of any ambiguity or uncertainty, no occasion arises

for the construction of a statute. The appellate courts follow this rule, and in Steggal v. Morris, 258 S.W. 2d 577, l.c. 582, we find the following expression thereof:

> " * * * However, whether remedial or in derogation of the common law, we have no right to change the meaning of a plain and unambiguous statute. Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S.W. 2d 920, 931 (19,20); Section 1.010 RSMo 1949, V.A.M.S.
>
> "In State ex inf. Rice ex rel. Allman v. Hawk, 360 Mo. 490, 228 S.W. 2d 785, loc. cit. 789 (8,9), this court stated the rule thus: 'The language of the statute is clear and unambiguous, and we have no right to read into it an intent which is contrary to the legislative intent made evident by the phraseology employed.'"

What we have said precludes our consideration of the intent of the statute beyond its plain language. We therefore, of necessity, must reach the conclusion that by its own terms the statute prohibits female employees working longer than the hours set forth. We, of course, in this opinion, have assumed that the establishments referred to as being either a "restaurant" or a "laundry" are, in fact, places of employment having the usual characteristics thereof.

Under paragraph (b) of your letter of inquiry you have presented the further question of the applicability of the statute to the rendition of services which are merely "incidental" to services rendered in connection with the general administration of the institution. You have not supplied us with any specific facts respecting the hours devoted to stenographic employment in connection with either the "restaurant" or the "laundry." Absent such information, we can but express our opinion in a general way. It seems that if the hours of stenographic employment in the prohibited businesses were such as to represent hours in excess of those allowed in any one day or any one calendar week, then the statute would be violated, with a contrary conclusion being reached in the event that the total hours did not exceed those limited by the statute.

Honorable Douglas W. Greene

CONCLUSION

In the premises, we are of the opinion that Section 290.040, RSMo 1949, is applicable to the female employees of an educational institution if employed in establishments which are in fact either a "restaurant" or a "laundry," and to the rendition of stenographic services in connection with either or all of such establishments.

We are further of the opinion that if stenographic employment in either the "restaurant" or "laundry" exceeded the hours limited by the statute in any one day or during any one calendar week, then such employment would violate the terms of the statute even though such employment was merely "incidental" to similar services rendered in connection with the general administration of the institution, with a contrary result, of course, being reached if, as a matter of fact, such employment did not exceed the hours so limited.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:ml