LABOR LAW: A female employee engaged in a clerical capacity in one of the Cities Service Oil Company may work only nine hours a day for six days a week.

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April 15, 1947

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Mr. Carl E. Luckow
Assistant Director
Division of Industrial Inspection
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion of this department on a question referred to you by the Cities Service Oil Company which is as follows:

> "I would appreciate receiving your definition of the words 'Mercantile Establishments' as used in Sec. 7815 Laws of Missouri, 1913.
>
> "Would a female employee engaged in a clerical capacity in one of our accounting offices be prohibited from working more than 9 hours in one day on one or two occasions per month?"

Section 7815, Laws of Missouri, 1913, referred to above, is Section 10171, R. S. Mo. 1939, and reads in part 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, 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: * * *"

It is clear that the Cities Service Oil Company is a mercantile establishment. In the case of In re Pacific Coast Warehouse Co., 123 Fed. 749, the following definition was adopted by the court, at l. c. 750:

> "'* * * The word "mercantile," in its ordinary acceptation, pertains to the business of merchants, and has "to do with trade, or the buying and selling of commodities." A merchant is one who traffics, or who buys and sells goods or commodities. * * * The term "mercantile pursuits" necessarily carries with it the idea of traffic, the buying of something from another or the selling of something to another, and is allied to trade. * * *'"

The Cities Service Oil Company sells all types of petroleum products and is therefore in the mercantile business.

This leaves the sole question of whether or not a person employed in the accounting department of the Cities Service Oil Company should be considered to be employed <u>in</u> a mercantile establishment. It is fundamental that the legislative intent should be ascertained, if possible, when construing statutes. In upholding the constitutionality of minimum hour laws for females the courts have been uniform in stating that the purpose of this type of a law is to protect the public welfare. In the case of Muller v. Oregon, 208 U. S. 412, 52 L. Ed. 551, a statute of Oregon that provided for minimum working hours for females was under consideration. In commenting upon the intent of the legislatures in passing these types of laws, the court stated at l. c. 556:

> "That woman's physical structure and the performance of maternal functions

> place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."

With this stated purpose in mind we believe it is necessary to give to the statute a broad and liberal construction.

In the case of Spielmann v. Industrial Commission et al., 295 N. W. 1, a statute of Wisconsin was under consideration in which it was necessary to define the meaning of the word "establishment." The facts show that an auto corporation owned a body plant in Milwaukee and an assembly plant at Kenosha and Racine. It was contended that a work stoppage in one plant, due to a strike, would not prevent the workers in the other plants from receiving unemployment compensation when it became necessary to close up these other plants. The Wisconsin statute prohibited the payment of unemployment compensation when the work stoppage was the result of a strike in an establishment. The Industrial Commission of Wisconsin held that all three plants was a single establishment within the meaning of the statute. In commenting upon this ruling, the Supreme Court of Wisconsin stated at l. c. 5:

> "It is suggested that the use of the word 'in' instead of 'by' in the clause 'establishment in which he is or was employed' indicates that the word establishment was used in the sense of a definite place. Perhaps the use of 'by' would have more emphasized the fact that the word 'establishment' was used in a comprehensive rather than a restricted sense, but we consider that the use of 'in' does not preclude the meaning given to par. (a) of the statute by the Commission. Legislatures can not be conclusively

> presumed to have used such fine discrimination in their use of prepositions. The meaning of the word 'establishment' is to be drawn from the whole act rather than from so insignificant a thing as a single preposition. We consider that the conclusion of the Commission must be sustained."

In the case of Commonwealth v. John T. Connor Co., 222 Mass. 299, the court had a statute similar to the Missouri statute under consideration. The evidence showed that the employer hired one Elsie Finn as a cashier and bookkeeper in his grocer store. She was in no way connected with the sale of goods and was set off by herself in a cage. The court held that her employment was subject to the minimum hour statute. We believe the situation that is before us for consideration is analogous to the two outlined above. Even though the female employee is working in the accounting offices she is actually being employed in the Cities Service Oil Company, a mercantile establishment.

Conclusion

Therefore, it is the opinion of this department that a female employee engaged in a clerical capacity in one of the accounting offices of the Cities Service Oil Company, would be prohibited from working more than nine hours in one day as provided by Section 10171, R. S. Mo. 1939.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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