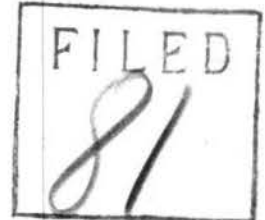


LABOR; WOMEN:  
WORKSHOP;  
OUTSIDE WORK:

Sec. 13210 R. S. Missouri, 1929, Mo. Stat. Ann. page 4776, does not apply to female employees doing stenographic and clerical work in a general office where no sales are made but where reports from local retail stores are assembled and consolidated; said sec. 13210 does not apply to female employees doing outside sales work.

March 5, 1940

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Mr. Earl H. Shackelford,  
Commissioner  
Labor and Industrial Inspection  
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter dated February 26, 1940, in which, in the following terms, in part, you request our opinion:

- "1. Does Section 13210 apply to female employees doing stenographic and clerical work in a general office where no sales are made but where reports from local retail stores are assembled and consolidated?
2. Do the provisions of Section 13210 apply to female employees doing outside sales work?"

The letter of the Singer Sewing Machine Company dated February 23, 1940, addressed to the Commissioner of Labor is herewith returned.

Section 13210 R. S. Missouri, 1929, Mo. Stat. Ann. page 4776, provides:

"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."

A well settled rule of statutory construction is that, as stated in State ex Inf. Conkling ex rel v. Sweeny, 270 Mo. 685 I.c. 692, 195 SW 714, "the expression of one thing is the exclusion of another." Before the office and employees described in your first question can be within the application of said section 13210 they must be found within its terms. The office

is not a "manufacturing establishment" because nothing is manufactured there. It is not a "mechanical establishment" because the mechanical element does not predominate. The criterion of a mechanical establishment was well stated in the following terms in State v. Crouse, 105 Neb. 672, 181 NW 562:

" \* \* \* 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. \* \* \* "

The office is not a "mercantile establishment" because nothing is sold there. It is clearly not a "factory, laundry, bakery, restaurant or place of amusement." In Sec. 13287 R. S. 1929, Mo. Stat. Ann. page 4817, in the same chapter (chapter 95) in which said section 13210 is found, on the same subject (employment of women) the Missouri Legislature defined a "workshop" in the following terms:

"\* \* \* The expression 'factory' means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on. The expression 'workshop' means any premises, room or place, not being a factory as above defined, wherein any manual labor is exercised by way of trade, or for purposes of gain, in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which

or over which premises, room or place the employer of the persons working therein has the right of access or control: Provided, however, that the exercise of manual labor in a private house or room by a family dwelling therein shall not in itself constitute such house or room a workshop within this definition."

Said definition is fundamentally consistent with other definitions by the courts and by the legislatures of other states, some of which may be found in 71 C. J. page 1616; *Sorseleil v. Red Lake Falls Milling Company*, 126 NW 903, 905, 111 Minn. 275. It is basically consistent with the definition under English Laws and Statutes. *Fuller v. Squire* (1901) 2 K. B. (Eng.) 209, 70 L.J.K.B.N.S. 689, 85 L.T.N.S. 249, 85 J. P. 660, 49 Week. Rep. 683, (16 A. L. R. 541). A similar definition is found in Webster's International Dictionary (1927) page 2350. The office here considered lacks the element of being one wherein work was done "in or instrumental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article." Said office is not within any of the above quoted and cited definitions and said section 13210 does not apply to such office.

It was held in one Washington case that the office of a gas company was included within the term "workshop." However, that case is different from this one and does not apply, because the basis of that decision was a statutory definition which was clearly broader than the definition of a workshop, above quoted, by the Missouri Legislature. *Gowey v. Seattle Lighting Company*, 184 Pac. 339, 108 Washington 479.

Regarding your second question, said Section 13210 by its terms applies only to work done "in" certain kinds of establishments. Said Section 13210 does not apply to employees working outside such establishments.

Mr. Earl H. Shackelford

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March 5, 1940

CONCLUSION

Section 13210 R. S. Missouri, 1929, Mo. Stat. Ann., page 4776, does not apply to female employees doing stenographic and clerical work in a general office where no sales are made but where reports from local retail stores are assembled and consolidated; said section 13210 does not apply to female employees doing outside sales work.

Respectfully submitted,

LAWRENCE L. BRADLEY  
Assistant Attorney General

EH:RW

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General