

LABOR: Industrial Inspection statute will apply to dress shops, drug stores, plumbing establishments and cooperative associations, but not to shoe shops.

September 16, 1943

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Honorable George A. Spencer  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Mr. Spencer:

This will acknowledge receipt of your letter of September 2, 1943, addressed to the Attorney-General, in which you requested an opinion from this department. This request, omitting caption and signature, is as follows:

"I presume you have written an opinion concerning the constitutionality and applicability of Sections 10179 and 10180 relative to the inspection of various businesses.

"Business people seem to feel this is somewhat of a worthless service as an inspector merely walks into the front door and back to the back and comes back and hands them a bill. I know this is the enforcement end of it, but the particular question I am interested in is whether or not it would apply to drug stores, dress shops, shoe shops, plumbing establishments, the local cooperative association and similar businesses.

"Thanking you for an opinion on this matter,"

The inspection of certain businesses is provided for in Section 10179, R. S. Mo. 1939. This section of the statute provides as follows:

"The state commissioner of labor and 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. It shall be the duty of the commissioner, 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, bake shops, 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 commissioner 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 commissioner. The commissioner, his assistants and deputy inspectors, may administer oaths and take affidavits in matters concerning the enforcement of the various inspection laws relating to these establishments; Provided, that the provision of this section shall not apply to mercantile establishments that employ less than ten persons that are located in towns and cities that have three thousand inhabitants or less."

All of the powers and duties of the state industrial inspector and his deputies have been transferred to the Commissioner of Labor and Industrial Inspection and his deputies. This transfer is prescribed in Section 10141, R. S. Mo. 1939. This section of the statutes is as follows:

"All the Powers now conferred upon the commissioner of labor statistics, and the industrial inspector, as provided by law are transferred to the department of labor and industrial inspection, and conferred upon the commissioner of labor and industrial inspection provided for in this article, and said commissioner shall be chargeable with all the duties of enforcing the provisions of this chapter and shall be liable to all the penalties to which any of the commissioners, boards or bureaus, stood amendable by law at the time this section took effect, it being the declared purpose of the General Assembly to effect a consolidation, under the single department created by this article, of the departments of labor statistics, and industrial inspection, as now provided by law, and to transfer the powers, duties and functions of these departments, commissions, boards and bureaus to the department created by this article, in order to bring about a more orderly and economical administration of the laws pertaining thereto."

The constitutionality of the statute relating to industrial inspection and the collection of a fee for such service has been questioned and upheld by the courts of this State in the case of State v. Vickers, 186 Mo. 103, 84 S. W. 908. The court further held that this inspection fee was not a tax upon property.

Consequently, the only other question to be considered is whether the five businesses set out in your letter will come under any of the occupations mentioned in Section 10179, R. S. Mo. 1939, aforesaid. Therefore, the best procedure would seem to us to be to look at the definition of the terms set out in the statute.

A "mercantile establishment" has been defined as:

"A place where the buying and selling of articles of merchandise is conducted." Veazy Drug Co. v. Bruza, 37 P. (2d) 294, 169 Okla. 418.

and

"A place where the buying and selling of articles of merchandise is conducted, and the conducting of such an establishment implies operations conducted with the view of realizing the profits which come from skillful purchase, barter, speculation and sale." Hotchkiss v. Dist. of Columbia, 44 App. D. C. 73, 79.

also,

"'Mercantile business' which requires licensing consists of the sum of transactions of buying and selling, and hence merchant can neither buy nor sell until he is licensed." State v. Mason (Utah), 78 Pac. (2d) 920, 925.

In your request there are five different businesses set out. They are drug stores, dress shops, plumbing establishments, cooperative stores and shoe shops. With the possible exception of the last named, to-wit, "shoe shops," we feel that all of them come within the purview of the statute. There can be no doubt but that a drug store and a dress shop are mercantile establishments, since they are both places where commodities are bought and sold presumably for a profit. If the "dress shop" is an establishment which manufactures dresses, it would then be covered by the term "manufacturing" establishment.

We further believe that a "plumbing establishment," at least one that offers merchandise for sale, would be covered by this statute. Common experience teaches us that as a general rule all such establishments do offer merchandise for sale. Likewise, we believe that a cooperative association would be subject to inspection as provided by Section 10179, R. S. Mo. 1939, since it is an establishment where merchandise of one kind or another is bought and sold.

As to the last business mentioned in your request, which was a "shoe shop," it is questionable whether the statute would govern this occupation. We presume by the term "shoe shop," you mean a business store where shoes are repaired and not a

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store where shoes are sold. If we are correct in this presumption, and that you refer to a strict shoe repair business, it is extremely doubtful that the above statute will be enforceable.

In making the above statements we wish it understood that the actual facts with reference to each individual case will have a great deal of bearing on the question of the applicability of the statute. In other words, if a "shoe shop" included a shoe repair shop and also a place where shoes were bought and sold, then in such case the statute would apply. However, we do feel that the statements we have made are correct in so far as we can construe the statute with the information at hand.

Conclusion.

Therefore, it is the conclusion of this department that Section 10179, R. S. Mo. 1939, will apply to drug stores, dress shops, plumbing establishments and cooperative associations, since they are mercantile establishments. However, we do not think that it will apply to a "shoe shop" if such term is used in the sense of a shoe repair establishment.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

JSP:EG