HOURS OF LABOR:
FEMALE EMPLOYES: Female employe may not be employed more than nine hours in any one day or more than fifty-four hours during any one week.

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June 25, 1943

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Mr. Orville S. Traylor
Commissioner of Labor
Jefferson City, Missouri

Dear Mr. Traylor:

This office is in receipt of your request for an opinion, the details of which are set out in a letter from the Great Atlantic and Pacific Tea Company. This letter reads as follows:

> "We have recently added a woman to our staff of Field Auditors and we should like to have your clarification of her work hour schedule.
>
> "At present she is being paid for a 48 hour week, consisting of time spent both in traveling to and from stores in St. Louis and in time spent actually working in the stores. Her work includes inventorying merchandise in the stores, counting ration points and checking managers' cash balances and of observing the practices of company policies. Time spent in a store runs from 2½ hours in a small service store to 5 hours in a large super market.
>
> "Due to several of our male field auditors expecting to be called for military duty and the decrease in

available manpower for replacements, we may find it necessary to send this woman field auditor to our stores located in a radius of approximately 200 miles of St. Louis. The time required in traveling to and from stores may run into several hours a day. If time consumed in travel were to be considered as part of her nine hour work day we would obtain considerably less than nine hours work from her on some days.

"We intend to continue to pay her for total number of hours per week spent in traveling to and from stores plus time spent in the stores, but we would like to have approval from you to include only the hours actually spent working in the stores in her nine hour work day and exclude time spent in travel. The local office of your department has verbally approved this, but we would appreciate a letter from you for our files and they recommended our writing you for it."

The statute quoted in your letter is Section 10171 R. S. Mo., 1939. The full text reads as follows:

"No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establisment, 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."

The penalty section may be found at Section 10173 R. S. Mo., 1939, which we do not quote because of its length and for the further reason that thusfar no violation of the statute is involved. This statute is clear, unambiguous and needs no interpretation, yet for the purposes of our discussion we refer you to other authorities and decisions in support of the conclusion to which we arrive.

The statutes involving hours of service restricting the laws of labor for female employes have been enacted,

the object of which is to secure the public comfort, welfare, health and safety of this class of employes. Your attention is directed to that paragraph, 39 C. J. 58, 59, paragraph 37:

> "In holding valid laws restricting the hours of labor of women, as a class, the consideration of health is of especial importance, and a law as applied to them may be valid when similar statutes would be invalid if applied to males. The guaranty against discrimination in a state constitution providing that no person shall, on account of sex, be disqualified from entering or pursuing any lawful business, vocation, or profession, is subject to reasonable regulations under the police power, and does not prevent reasonable restrictions of females in their working hours under the police power for the protection and preservation of the public health."

Devoting our attention now to the question as to what constitutes hours of work we find in 19 Words and Phrases, page 679, the following:

> "Within Workmen's Compensation Act June 2, 1915, art. 3, sec. 301, P. L. 736, 77 P. S. pars. 411, 436, the injury must occur within the 'hours of employment' but the 'hours of employment' are not confined to the period for which wages are paid, but may include time, before the beginning of regular work, after it was ended, or during intervening

hours. Malky v. Kiskiminetas Valley Coal Co., 123 A. 505, 506, 278 Pa. 552, 31 A. L. R. 1082.

"The 'hours of service' during which an injury must occur in order to entitle the employee to compensation, in view of Gen. St. 1923, sec. 4326, subd. (j), are not limited to the hours for which the injured employee is paid or actually rendering service, but include the period of reasonably prompt ingress and egress while still upon the immediate premises, and extend to the time when an employee, having put aside his own independent purposes, has entered the premises of his employer appurtenant to the place where his service is rendered for the purpose of beginning such service immediately, or within a reasonable time, and is approaching the place thereof by an avenue customarily used by employees. Simonson v. Knight, 219 N. W. 869, 870, 174 Minn. 491."

Looking to other jurisdictions on the same subjects we find in Haddad v. State, 86 Tex. Crim. App. 592, 218 S. W. 506. In this case involving the question as to whether the time a waitress is eating her meals in a cafe in which she was employed should be deducted from her hours of employment the court said:

"It is contended that the time she used in eating her meals, or practically one hour a day, should be discounted from the 9 hours if she

only worked one day, or the one hour per day should be discounted from the 54 hours; if this is correct, then her employer was entitled to a discount as against the 54 hours of 7 hours; that he should not be charged under the allegation or theory of 54 hours with the time that she was visiting about the town and the one or two evenings when she failed to present herself in her employment and was absent. We are of opinion that the time she occupied at meals should not be discounted from her terms of employment; that she was in the café and was ready to discharge her duties, and sometimes was called from her meals while eating to wait upon customers. This we think shows that she was in the employ of her employer, and he was not entitled to credit as against the 54 hours for such time. But we are further of opinion that her absence on other occasions above mentioned should be deducted from the 54 hours. She was not working under employment, was absent from it, and was not subject to the calls of duty of her employer, but she was in position where she could not work nor be required to work. This was voluntary on her part. She was not rendering any service, or in position to do so. * * * * * * "

CONCLUSION

From the above and foregoing, it is the opinion of this department that the State, under the Constitution, has the right to regulate hours of labor of female employes, that in the regulations requiring an employer to work his female employes no longer than such hours per day, the "hours of labor" must include that time the employe is actually under the direction and employment of the master, that the auditor in the course of her employment may not deduct from her hours that time spent in being transported from the various company's stores.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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