LABOR: Under Laws 1913, p.400 females may not be employed
WOMEN: in state for more than 9 hours a day or 54 hours a week.

October 19, 1943.

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

Dear Sir:

In your letter of July 8, 1943, you have asked our opinion as to the present effectiveness of Section 10171, R. S. Mo. 1939, in view of the decision of the Supreme Court of Missouri in State v. Taylor et al. 173 S.W. (2d) 902.

Section 10171, R. S. Mo. 1939, is 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: 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.

This statute was changed to its present form, by way of an amendment appearing in Laws 1919, page 447, which changed the underlined word "or" from "of" and which added the third proviso above underlined. The court in the Taylor case (l.c. 904) in discussing this amendment stated:

> "* * * the title of the 1919 Act merely declared its purpose to amend Sec. 7815 in the 1913 Act (italics ours) 'by striking out certain words therein;' and the recital in the first or enacting clause of the 1919 Act also was limited to a statement that the word 'or' was being substituted for the word 'of' in the eighth line. Neither the title nor the enacting clause disclosed the third proviso was being added."

Section 28, Article 4 of the Constitution provides:

> "No bill * * * * shall contain more than one subject, which shall be clearly expressed in its title."

The title of the 1919 Act clearly does not comply with this provision and is therefore unconstitutional because it failed to show that the subject of the amendatory act was to exclude cities of 3000 or under from the scope of the act.

In the Taylor case the state failed to raise in the trial court the point that the 1919 amendatory Act was itself invalid due to the defective title and the court therefore ruled that Section 10171 was unconstitutional because the exclusion of cities under 3000 created an unreasonable discrimination between areas of the state. The court stated (l.c. 905):

> "Taking the case as it was presented below, we think the trial court was right in holding Sec. 10171 as it now appears in the 1939 Revision is discriminatory and constitutionally void under both Sec. 30, Art. II and Sec. 53, subsec. 24, Art. IV."

Then the court went on to say (l.c. 905-6):

> "* * * If the State had challenged below the constitutional validity of the enactment of the 1919 amendment, and the trial court had ruled adversely on the challenge, a very serious question would have been presented. Or if the State had contended there, as it suggests here, that the third proviso added by the 1919 amendment was substantively unconstitutional, in consequence of which only that amending proviso was void leaving the statute as it stood before, another serious question would have been presented. The authorities cited by the State and listed in marginal note 2, supra, sustain that view; and the statute shorn of the proviso would apply anywhere throughout the State, except as regards the exemptions in the first and second provisos, which are immaterial here.* *"

Thus clearly the court was not holding Section 10171 unconstitutional for all times, but only as presented in that case. If, in another case, where the validity of said section is attacked due to the discrimination caused by the proviso excluding cities of 3000 or less, the State raises in the trial court the point that the 1919 amendatory Act is invalid, then we are of the opinion that Section 10171, as it appears in Laws 1913, page 400, will stand the test of constitutionality.

The 1913 Act (Laws 1913, p.400) which we think is today the governing law, is as follows:

"No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establishments, or factory, workshop, laundry, or bakery, or 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 above described, or by any person, firm or corporation engaged in any express or transportation of (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, that nothing in this section shall be construed or understood to apply to telegraph or telephone companies."

CONCLUSION

It therefore is our opinion that the Act appearing in Laws 1913, page 400, today prohibits the employment of women more than nine hours in one day or more than fifty-four hours in one week in all parts of the state.

Respectfully submitted,

APPROVED:

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