LABOR: Section 7815, page 400, Laws of Missouri, 1913, prevents female employees from working full time under such Act at plant and then taking work out to be done at home.

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November 3, 1943

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Mr. Orville S. Traylor
Commissioner
Labor and Industrial Inspection Department
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, under date of October 28th, which reads as follows:

> "Would it be a violation of Section 7815, R. S. Missouri, 1913, if females, after working in the Billing Department of a plant for nine hours a day, take work home with them to be done for the company at the regular hourly wage?
>
> "Would it be a violation of this section if these girls received no compensation for this home work?"

Under date of October 19th, 1943, this department rendered an opinion to you, holding that the Act of 1913 is the controlling law rather than Section 10171, R. S. Mo. 1939. Hereafter any reference to Section 10171 shall apply to Section 7815, Laws 1913.

One of the cardinal rules of statutory construction is to ascertain the legislative intention, and, in so doing reference should be had to the policy adopted by the Legislature in reference to the particular subject matter, object of statute and mischief sought to be prevented or remedied.

In State ex rel. Lentine v. State Board of Health, et al., 65 S. W. (2d) 943, l. c. 950, the court said:

> "It may be considered trite to again observe that the primary and fundamental purpose in statutory construction is to ascertain and give effect to the legislative intent nevertheless such is always the end sought and the numerous rules for the interpretation or construction of statutes are merely aids in the quest. But such rules should not be so applied as to restrict or confine the operation of a statute within narrower limits or bounds than manifestly intended by the Legislature and whether the proper construction of a statute should be strict or liberal it certainly should be such as to effectuate the obvious purpose of its enactment and the evident legislative intent. Reference should be had to the policy adopted by the Legislature in reference to the subject-matter, the object of the statute, and the mischief it strikes at or seeks to prevent, as well as the remedy provided. * * * * * * * * *"

Section 7815, page 400, Laws of Missouri, 1913, reads 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: Pro-

> vided, 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."

It is quite apparent that one of the principal reasons for the Legislature enacting the above law was to prevent any such employer from working any female employees for more than nine hours during any one day, or fifty-four hours during any one week; that to consistently work such employees more than such hours unquestionably would impair their general health and should be prohibited. Therefore, in construing this provision we must bear in mind the reason and purpose for such enactment.

The decisions are unanimous in defining what constitutes a day. A day is twenty-four hours intervening between midnight of one day and the following midnight.

In State v. Meagher, 101 S. W. 634, l. c. 635, 124 Mo. App. 333, the court in defining a day said:

> "* * * Our statute does not define the day, but we must take it to mean what the term ordinarily signifies (sec. 4160, R. S. 1899) that is, that it consists of twenty-four hours, commencing and terminating at midnight."

Section 7815, supra, reads in part:

> "No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establishments, * * * * * * * * * or to do any stenographic or clerical work of any character in any of the

> divers kinds of establishments and places of industry, * * * * * * * *"

Section 10172, R. S. Mo. 1939, provides it shall be unlawful to knowingly permit the employment of a female in any of the places of industry or business mentioned in Section 10171, R. S. Mo. 1939, within three weeks before or after childbirth. Section 10172, supra, reads as follows:

> "It shall be unlawful for any person, firm or corporation to knowingly employ a female or permit a female to be employed in any of the divers kinds of establishments, places of industry, or places of business specified in section 10171, within three weeks before or three weeks after childbirth. Any person, firm or corporation who shall violate this section shall be deemed guilty of a misdemeanor."

Furthermore, Section 10173, R. S. Mo. 1939, specifies the penalty for a violation of Section 10171, supra, in working any female employee more than the number of hours specified therein, and likewise refers to in any of the places mentioned in Section 10171, supra. Section 10173, supra, reads as follows:

> "Any employer or overseer, superintendent, foreman, agent or any other employee who shall require or permit or suffer any female to work in any of the places mentioned in section 10171 of this article more than the number of hours therein specified, or any employer who permits or suffers any overseer, superintendent, foreman, agent or other employee to require or to permit or to suffer any female to work in any of the places mentioned in section 10171 of this article more than the number of hours therein specified shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than twenty-five dollars nor more than one hundred dollars."

In view of Sections 10172, and 10173, supra, making it a misdemeanor for a violation of Section 10171, supra, it might require a strict construction in favor of the person charged with the offense, and, in construing the words hereinabove underscored in Sections 10172, and 10173, supra, it is barely possible that the courts would hold that no violation of Section 10171, supra, would be committed under the facts contained in your request permitting the employee to take work home after having theretofore worked in the place of business the maximum hours under Section 10171, supra, since it only makes it a misdemeanor for working females longer than required in places mentioned in Section 10171, supra, and it does not specifically make it a violation for working more than the maximum hours while in the home of the employee.

The writer has searched the decisions in this State, and others, and is unable to find any decision exactly in point. It is a very close question and difficult to determine just how a court might rule under the facts. It may be advisable for some interested party to have the court pass upon this matter.

In view of what has been said, we must hold the restriction is against the employment in excess of the maximum hours as provided in Section 10171, supra, and not just against working at the plant in excess of such maximum hours. While Section 7815, supra, refers to work done in certain establishments, which ordinarily refers to certain enclosures, we think the Legislature fully had in mind that no single employer of the kind enumerated in Section 7815, supra, should work any female employee longer than nine hours during any day and fifty-four hours during any week, regardless of whether such employee performed all the work in the establishment, at another place, or even in her home. There is a long established maxim of law that one cannot do something indirectly which he is prohibited from doing directly. We think this is applicable in the instant case. In Eisensmith, et al. v. Buhl Optical Co., 178 S. E. 695, l. c. 697, it is stated:

> "The act precludes all persons not properly registered from practicing optometry. A corporation is a person, and in the nature of things it cannot possess the qualifications to practice optometry. A person, individual or corporate, may not do by indirection what he or it is precluded from doing directly."

If Section 7815, supra, should be construed to restrict the employer only while working such female employees within the confines or premises of the plant, and at no other place, then the purpose of the act certainly is only partially carried out, for said employer may give such employees certain home work, as referred to in your request. In such event, said employees might be working a total of twelve, fifteen or more hours during the day; all of which is nothing more than a subterfuge of the law, and, in direct violation of Section 7815, supra.

CONCLUSION

Therefore, it is the opinion of this department that if the foregoing statutory provisions be given a strict construction, then they should be construed so as to prohibit such employees from working in excess of the maximum amount of hours during any day or week as provided in Section 7815, supra, while actually working in the place of business; but in such case, there should be no restriction against such employees taking additional work home, since under the strict construction Section 7815, supra, would be applicable to only work executed within the plant or industry. However, if such provisions be given a liberal construction, it places a restriction against the employment for more than the maximum hours permitted under Section 7815, supra, and in such case the employee is permitted under no circumstances to work in excess of such maximum hours as provided in Section 7815, supra. This would prevent an employee working nine hours at the office continuing to work at her home after office hours.

This department feels that in construing these provisions a liberal construction should be given. Therefore, we conclude that no female other than those specifically excepted in Section 7815, supra, employed in any of those industries named in Section 7815, supra, may work in excess of nine hours during any one day, or more than fifty-four hours during any one week, no matter where the work is executed, whether in the plant, office or at home.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, JR.
Assistant Attorney-General

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Attorney-General

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