CHILD LABOR LAW:)
) Private hospitals employing children
EMPLOYMENT OF CHILDREN:) under 16 years of age are commercial enterprises, and within the child labor laws respecting certificates of age, type of work, maximum hours, and minimum age, etc.

September 1, 1944

9-11

FILE 90

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

Dear Sir:

Your letter of August 21, 1944, respecting the employment of children by private hospitals, and in which you request the opinion of this department as to the status of such hospitals, with respect to the child labor laws of this State, has been received. Your letter is as follows:

> "This department is desirous of an opinion as to the status of private hospitals in regard to the child labor laws of this state. We wish to know if a hospital must comply with the child labor laws, especially in regard to certificates of age, type of work, maximum hours, and minimum age.
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> "These children working in hospitals are of a minimum age of twelve years and are usually hired as dishwashers for approximately three periods a day and during other parts of the day, do general cleaning, paint removing, painting, and so forth."

You submit for an opinion the questions of: first; what is the status of private hospitals in regard to the child labor laws of this State, and second; whether private hospitals are required to comply with the child labor laws of Missouri, especially in regard to certificates of age, type of work, maximum hours and minimum age, when employing children under 16 years of age.

The opinion requested requires the consideration of the terms set forth in Article 3, Chapter 56, R. S. Mo. 1939. Sections 9619 and 9620, Article 3, Chapter 56, R. S. Mo. 1939, under the title of "Employment of Children," are as follows:

> (Sec. 9619)
> "It shall be unlawful for any child in this state under the age of fourteen years to be employed, permitted or suffered to work at any gainful occupation except in, (a) The sale and distribution of newspapers, magazines and periodicals. (b) Agricultural labor and domestic service, or any service performed for parent or guardian."

> (Sec. 9620)
> "It shall be unlawful for any child in this state under the age of 16 years to be employed, permitted or suffered to work at any gainful occupation unless such employment is authorized as in this article, or otherwise by law provided: Provided, that during the hours public schools are not in session, children between the ages of twelve and sixteen years may be gainfully employed except in industries which employ more than six persons."

It will be noted that Section 9619 prohibits the employment of any child under fourteen years of age, or permitting or suffering such child to work at any gainful occupation except those mentioned in clauses "(a)" and "(b)" of said section hereinabove copied.

There is no decision by the appellate courts of Missouri, under a comparable state of facts to those involved here, determining what is "domestic service." In the case of Barres v. Watterson Hotel Company, 244 S. W. 308 (Ky.), the term "domestic employment" was before the Court of Appeals of Kentucky for construction and definition.

The case was one growing out of the exemption from the terms of the Workmen's Compensation Act of Kentucky of persons engaged in "domestic employment, agriculture" etc. The statute there being construed, although treating of a subject different from the one here being considered, contained language strikingly similar to the wording of our Section 9619 in defining the occupations exempted from the Act. The question to be decided therein was analogous to at least a part of the question submitted here, and the reasoning to be applied here is in parity to the reasoning adopted in that case. The Court of Appeals of Kentucky, on the question of what was "domestic service," and what was, in contrast thereto, a "business enterprise," l. c. 309, 310, said:

> "If appellant was a domestic servant, engaged in domestic employment at the time of her injury within the meaning of the act, then the demurrer should have been sustained to the answer. But was she such servant? She was, to be sure, engaged in an employment or occupation similar in many of its aspects to that generally pursued by domestics in the home. We apprehend, however, that the business of running a hotel is industrial in its nature, and not domestic in the general meaning of that word. A large hotel like the Watterson employs a great number of persons under one management, all forces being directed to the accomplishment of one purpose--the accommodation of the traveling public by supplying rooms and entertainment. This is a business. It is not a mere incident to a business. The home is an institution, not an industry. In such an institution the services of a domestic is a mere incident. A hotel is a business or industrial undertaking where persons pursue a gainful occupation in itself complete and independent, and not an incident to another business.
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> "Lexicographers define 'domestic' as a member of a household; inmate; one who

> lives in the family of another; a hired household assistant; a house servant; of or pertaining to one's house or home, or one's household or family, relating to home life. Bouvier says that the term does not extend to a servant when employment is out of doors, and not in the house. The work of a maid at a hotel like the Watterson, while somewhat similar to the duties of a maid in a home, is an employment required in carrying on a commercial enterprise, an industry, and therefore industrial in its essence and nature, and must be regarded as coming within the provisions of the Workmen's Compensation Act. It has been held that a page boy in a hotel who sleeps on the premises and who is principally employed as a messenger, partly also to assist in dusting the reception rooms, is not within the exception, but is engaged industrially and comes within the provisions of the act. Savoy Hotel Company v. London County Council, 1 Q. B. 665. In the case of Cook v. Dodge, reported in 6 La. Ann. 276, it was held that those who receive wages and stay in the house of a person paying and employing them for services or that of his family are domestics. On the other hand, it has been held that the work of taking up carpets or mattings, and of cleaning walls, transoms, and curtains, is a necessary part of the business of keeping the rooms and hallways of a lodging house in a state of cleanliness and good order, so that an employe injured while engaged in that work is in the usual course of the trade, business, profession, or occupation of the employer who conducts the lodging house. 28 R. C. L. p. 769; Walker v. Industrial Commission, 177 Cal. 737, 171 Pac. 954, L. R. A. 1918F, 212."

Applying the reasoning of that court in the case above cited to the quite similar state of facts in this case, and under

a similarly worded statute as to the character of service performed by children employed in private hospitals, it is quite evident that they do not come within the exception of "domestic service" as mentioned in clause "(b)" of said Section 9619, and certainly not under any other exception named in said Section 9619.

The operation of a private hospital is not a domestic undertaking. It could not be so, and at the same time offer and provide gainful occupations to its employes. It is a commercial business and industry, comparable to a hotel, and has no lawful authority to employ children under the age of fourteen years by the terms of said Section 9619, R. S. Mo. 1939.

But coming to consider Section 9620, we find that the proviso thereof says:

> "Provided, that during the hours public schools are not in session, children between the ages of twelve and sixteen years may be gainfully employed except in industries which employ more than six persons."

This proviso of the last numbered section creates an additional exception to the broad prohibitory terms of Section 9619, supra, and makes the exercise of that exception a question of fact, to-wit, whether the industry, permitted by the statute to employ children between the ages of twelve and sixteen years, during the hours public schools are not in session, does or does not employ more than six persons. If it does employ more than six persons, it would have no authority to employ such children at any time. If a less number than six persons are so employed by the industry, it may, by the terms of the proviso mentioned, employ such children at such hours as public schools are in recess, if otherwise complying with the terms of Sections 9620 and 9623.

Going back to Section 9620, we find that it states that "it shall be unlawful for any child * * * under the age of 16 years to be employed" unless such employment is authorized by Article 3, Chapter 56, R. S. Mo. 1939, or some other provision of law. The only section constituting a part of Article

3, authorizing the employment of children under sixteen years of age, except the proviso in section 9620, is Section 9623. Section 9623 makes no exception of children under sixteen years of age who must be provided with work permits before being employed or permitted to work at any gainful occupation. It includes all children under sixteen years of age who are employed in any gainful occupation. The issuing of such permits is placed, by the terms of Section 9623, exclusively in the hands of school authorities. This, apparently, for the reason that school authorities, both in fact and under our compulsory attendance school laws (See Art. 12, Chapter 72, R. S. Mo. 1939) are placed in a better position to protect children under sixteen years of age from child labor abuses, and to best conserve their educational advantages than any other statutory authority. This commitment of supervision over the issuing of such certificates of facts by school superintendents, principals, or other officials, with its attendant detailed conditions required to be complied with before such work permit may be issued, is contained in Sections 9620 and 9623, supra.

These sections do not specify or single out children of any particular age under sixteen who shall be issued permits, but the terms and conditions contained in those sections apply to all children under sixteen years of age. There are no exceptions whatever in either of those sections nor in any other section of Article 3, Chapter 56, whereby children of any age under sixteen years are left unprotected by the terms thereof, but on the contrary full compliance must be made with all of the conditions precedent, required in Section 9623, in regard to certificates of name, age, sex, place of birth, date of birth and place of residence of the children, minimum age, together with the name and place of residence of his or her parent, guardian or custodian and also the name and address of the employer and the nature of the employment - all of which must be contained in the work permit itself - before a work permit may be issued to any such child.

Full compliance must also be made with all other requirements, or their alternatives, as are set forth in said section 9623, before a work permit may be lawfully issued to a child under sixteen years of age to be employed in any gainful occupation.

Conclusion

It is, therefore, in view of the positive terms of Article 3, Chapter 56, R. S. Mo. 1939, and especially Sections 9619, 9620, 9621, 9623 and 9626 thereof, respecting the employment of children in all gainful occupations, save those excepted in Section 9619, the opinion of this department that:

First; the status of private hospitals in regard to the child labor laws of the State of Missouri is that of commercial business enterprises, and does not come within the gainful occupations excepted from the terms of Article 3, Chapter 56, R. S. Mo. 1939, specified in Section 9619 thereof.

Second; that if and when private hospitals desire to employ children of any age under the age of sixteen years to perform labor and service for them, such private hospitals are required, prior to such employment, and before a work permit can be issued to such children, to strictly and fully comply with all the terms of every section of Article 3, Chapter 56, R. S. Mo. 1939, with special regard to the requirements of Section 9623 thereof.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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