

LABOR: Boys of 14 and 15 may be employed as telegraph messengers if they procure proper work permits, but such permits would not protect the employer of such boys if such employment turns out to be an employment in interstate commerce.

August 25, 1942.

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Honorable Orville S. Traylor,  
Commissioner of Labor and  
Industrial Inspection,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you submit a request for an opinion in the following form:

"A question has arisen concerning the authority of this Department, and other authorities interested, to allow boys of 14 and 15 years of age to be gainfully employed as telegraph messengers in this state.

"We would appreciate receiving your opinion in this matter, advising us as to our duty."

Section 9621, R. S. Mo. 1939, provides that no child under the age of sixteen years shall be employed, permitted or suffered to work at any gainful occupation for more than eight hours in any day, nor have more than forty-eight hours or six days in any one week, nor before the hour of seven o'clock in the forenoon nor after the hour of seven o'clock in the afternoon of any one day. Certain exceptions are made in that section, but the employments excepted from its operation do not include the employment as telegraph messengers. Therefore this section would apply to boys of fourteen and fifteen years of age who are employed as telegraph messengers.

Section 9622, R. S. Mo. 1939, forbids the employment of children under the age of sixteen years in certain designated lines of work, none of which would include the work of delivering telegraph messages, except in certain cases with

the approval of the school authorities. There is also a general provision in that section against employment of children under sixteen years of age in any occupation dangerous to the life, health or limb, or injurious to the health or morals of children under the age of sixteen. We do not believe that it can be said that the delivering of telegraph messages is so dangerous to life, health or limb or to the health or morals of children under sixteen as to come under the ban of said section.

Section 9623, R. S. Mo. 1939, provides in part as follows:

"Work permits shall be issued only by the superintendent or principal of the public school of the districts wherein such child resides, or by some person appointed by an order of the board of directors, board of education or body having local supervision of public schools. The work permit shall show the name, age, sex, place of birth, date of birth and place of residence of the child together with the name and place of residence of his parent, guardian or custodian and also the name and address of the employer and the nature of the employment for which the work permit was issued. \* \*"

Said latter section also places certain restrictions upon the issuance of such work permits and specifies what things must be done and what must be furnished before such permits shall be granted.

Section 9625, R. S. Mo. 1939, provides as follows:

"No fee shall be charged for a work permit issued under the provisions of this article. The forms for all work permits shall be prepared by the state superintendent of public schools in accordance with the provisions of section 9623 of this article. Such blank work permits as may be necessary to carry out the provisions of this article shall be furnished to the board of directors, board of education or body having local supervision of public schools of each school district by

the state superintendent of public schools."

From the foregoing sections of the statutes it will be seen that boys of the ages of fourteen and fifteen years may be employed as telegraph messengers provided they secure the work permits provided for in Section 9623. Such permits are issued by those in charge of the public school of the district wherein such boys reside.

Section 9626, R. S. Mo. 1939, provides as follows:

"The commissioner of labor and industrial inspection is hereby charged with the enforcement of the provisions of this article and all other laws regulating the employment of children and the commissioner of labor and industrial inspection is hereby vested with the power and jurisdiction to exercise such supervision over every employment as may be necessary adequately to enforce and administer this article, including the right to enter any place where children are employed and to inspect the premises and to call for and inspect work permits. The issuing officer is hereby authorized to cancel any work permit when it appears that it has been improperly granted or that the child is being injured, or is likely to be injured by the employment. Notice of such cancellation, with reasons therefor, shall be given immediately to the person, firm or corporation employing the child and thereafter it shall be unlawful for any such person, firm or corporation to continue to employ such child."

By the latter section it is the duty of the Commissioner of Labor and Industrial Inspection to have charge of the enforcement of the provisions of the statutes above quoted with regard to the employment of children and the issuing of work permits. Said section clearly implies that if such Commissioner upon inspection of places where children are employed finds that the child is being injured by such employment or is likely to be injured by such employment, it would be the duty of the school authorities who issued the work permit to cancel the same.

Section 9629, R. S. Mo. 1939, provides as follows:

"Any person violating the provisions of this article shall be deemed guilty of a misdemeanor."

From the foregoing we conclude that boys of the ages of fourteen and fifteen may, under the laws of Missouri, be permitted to be gainfully employed as telegraph messengers provided they secure proper work permits in accordance with the statutes above set out. A question will likely arise as to whether boys of said ages could be so employed as telegraph messengers because of the fact that they might be engaged in interstate commerce. It is quite possible that some telegraph messenger boys would be engaged in interstate commerce, although they might not necessarily be so engaged. Of course, interstate commerce is beyond the power of the State of Missouri to regulate. (See Article I, Section 8, Clause 3, Constitution of the United States; Manning v. Fieldelson, 136 S. W. (2d) 510, 175 Tenn. 576.) By the Fair Labor Standards Act of 1938, 29 U.S.C.A., Chapter 8, it is unlawful to employ children under sixteen years of age in interstate commerce. However, we do not believe that the Commissioner of Labor and Industrial Inspection of Missouri must make a determination as to whether or not the proposed employment of boys of fourteen and fifteen years of age will be in interstate commerce. Such commissioner, and the school authorities acting under him, are authorized to issue work permits for boys of such ages when certain things have been done and certain evidence furnished. When those things have been done and all conditions of the state laws met, the Commissioner of Labor and Industrial Inspection and the school authorities acting under his supervision should issue the work permits in order to carry out the laws of the state which they are sworn to obey and enforce.

Such work permits would not protect the said minors in the event that they undertook to engage in interstate commerce since that field would be regulated entirely by Federal statutes. In order that those who might act upon the work permits provided for by the state law may not be misled into believing that the state laws were all that had to be complied with, it is suggested that it might be advisable to write or print on the form of permit some statement similar to the following: "This work permit does not supersede but is subject to the Fair Labor Standards Act of 1938." We do not think

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that such a precautionary statement is absolutely necessary, but it is merely suggested since those receiving the permits might eventually be employed in interstate commerce and hence such work permits would not protect their employers against the provisions of the Federal law.

#### Conclusion

It is therefore the opinion of this Department that the superintendent or principal of the public schools or the person appointed by an order of the board of directors or board of education may, under the supervision of the Commissioner of Labor and Industrial Inspection, issue work permits allowing the gainful employment of boys of fourteen and fifteen years of age as telegraph messengers in this State, but if such employment turns out to be employment in interstate commerce so that said boys are not permitted to work by reason of the Fair Labor Standards Act of 1938 (U.S.C.A., Chap. 8), then such permits would be of no legal force and effect. We believe that it is the duty of the proper authorities of this State to issue the work permits when the laws of Missouri have been complied with, leaving to the employer of such minors the determination of the question of whether they can lawfully employ such minors under Federal law.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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