

CHILD LABOR: - Students of the School of the Ozarks are exempt from Article 3, Chapter 125, R. S. Mo. 1929.

June 5, 1939

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Mrs. Mary Edna Cruzen
Commissioner of Labor
Jefferson City, Missouri

Dear Mrs. Cruzen:

This will acknowledge receipt of your request for an official opinion, under date of May 12, 1939, inquiring if the Department of Labor and Industry Inspection has authority to require students of the School of the Ozarks, Taney County, Missouri, between the ages of fourteen and sixteen to be certified as provided in Article 3, Chapter 125, R. S. Mo. 1929.

In the beginning we are assuming the following premise: that said School of the Ozarks, located in Taney County, Missouri, is more in the nature of a charitable institution. It is not operated for gain or profit, as these words are most commonly used, but for the sole purpose of furnishing education, board and room, clothing, etc. to children between the ages of twelve and eighteen whose parents are unable to send them to school, and in the absence of this institution would, in all probability, fail to receive the proper education. As we understand, the plan for the operation of this institution is that the children help in the fields, prepare food for canning and even help can the food, most of which is consumed by the children and personnel of the school. The school is maintained by contributions and by a very restricted sale of canned goods. Furthermore, this institution is not under the supervision of the State Board of Education, however, we are assuming that they receive an education similar to that offered in the public schools of the State of Missouri.

One of the cardinal rules of construction is to determine the intention of the legislature. State ex rel. Consolidated School District vs. Hackmann, 302 Mo. 558; 258 S. W. 1011.

None of the children in this institution receive any money for their labor, and there is no gain or profit to the institution. Under the laws of this state pertaining to regulation of Child Labor, one of the primary purposes of enacting such laws was to prohibit employment of children between the ages of twelve and eighteen in order that they may attend school. This is evidenced by Section 14085,

R. S. Mo. 1929 which provides that children between the ages of twelve and sixteen may be gainfully employed during hours public schools are not in session.

"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."

Likewise, under Section 14086, R. S. Mo. 1929, the legislature has provided an exemption from this article to children under sixteen when school is not in session.

"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 for 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. Provided, however, that the provisions of this article shall not apply to any child engaged in the sale of newspapers, magazines and periodicals, nor to agricultural labor and domestic service nor to any work, labor or service performed for or under the personal supervision or control of the parent or guardian of such child, nor when school is not in session to industries which employ less than six persons."

It will be noticed in the provisions hereinabove referred to that when speaking of employing children, said provisions refer to those gainfully employed, which leads us to believe that the legislature never intended that children who are enrolled in this school should come under this article; that such provisions apply only to children who are employed in a gainful occupation by some person, company, corporation or association who, for services rendered, pay said children some compensation; that such regulatory provisions were not intended to apply to such charitable institutions as the School of the Ozarks for the sole purpose of such organization is to provide for unfortunate children and furnish them an education which, otherwise, they would not be able to secure. These children are not employed but, are in fact for services rendered, paying for their education, room and board in this manner. It certainly cannot be said that they are employed in a gainful occupation. Webster's New International Dictionary (Second Edition) defines "gainful" and "occupation" as follows:

Gainful - Productive of gain; profitable, lucrative.

Occupation - 2. That which occupies or engages the time and attention; the principal business of one's life; vocation; business.

3. Those engaged in a calling or trade, collectively.

4. Engagement in some activity, calling, etc.; act of employing; use; handicraft; trade.

Another fundamental rule of construction is that when a statute is ambiguous the court may go to the title to aid in ascertaining the legislative intent. *Holder vs. Elms Hotel Company*, 92 S. W. (2d) 620; 338 Mo. 857.

The title to Section 14084, supra, reads as follows: Prohibiting children under 14 years of age from being employed-exceptions. The title to Section 14085, supra, reads as follows: Unlawful to employ children except as authorized in law. The title to these acts clearly indicates the provisions thereunder pertaining to prohibiting the employment of children under certain ages. We contend there is no employment of children by this school as that word "employment" is intended to be used in the above provisions; that it is merely a means for an end whereby these children may receive

an education; that the purpose of this act was to prohibit the employment of Child Labor in industries, factories and any other business for financial gain to the owners thereof; that these children do attend school and take advantage of all education offered by the institution and that to place these children under the provisions of Article 3, Chapter 125, R. S. Mo. 1929, would limit their possibilities for future training and education, and this was never the intention or purpose of the article.

In State ex rel. Lentine vs. State Board of Health, 65 S. W. (2d) 943, 1. c. 950, the court, in holding that it is not only fundamental to try to determine the legislative intent but also that reference should be had to the subject matter, object of statute and the mischief it strikes at or seeks to prevent, as well as the remedy provided, had the following to say:

"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."

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The court will not presume the legislature attempted to authorize a proceeding impossible in itself unless the intention is indicated in express terms. What has been said with respect to the state regulating children attending the School of the Ozarks is likewise applicable to the Federal regulations. We fail to see where this school could be considered as violating any Federal provision regulating Child Labor anymore than it violates the provisions of the State Act, especially in view of the fact that no orders have been issued by the chief of the Children's Bureau, United States Department of Labor against the system employed in educating these children.

Therefore, it is the opinion of this department that the students of the School of the Ozarks are exempt from Article 3, Chapter 125, R. S. Mo. 1929.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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