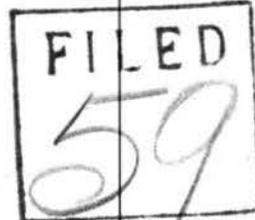


LABOR: Section 13218 R. S. Mo. 1929, applies to retail mercantile establishments.

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Mr. F. Hiram McLaughlin
Prosecuting Attorney
Springfield, Missouri

Dear Sir:

We are in receipt of your letter of June 12th, wherein you state as follows:

"Will you kindly give us your opinion as to whether or not Section #13218 applies to retail mercantile establishments. We would appreciate this opinion as soon as you can send the same to us."

Section 13218 R. S. Mo. 1929, provides as follows:

"The state commissioner of labor and industrial inspection may divide the state into districts, assign one or more deputy inspectors to each district, and may, at his discretion, change or transfer them from one district to another. It shall be the duty of the commissioner, his assistants or deputy inspectors, to make not less than two inspections during each year of all factories, warehouses, office buildings, freight depots, machine shops, garages, laundries, tenement workshops, bake shops, restaurants, bowling alleys, pool halls, theaters, concert halls, moving picture houses, or places of public amusement, and all other manufacturing, mechanical and mercantile establishments and workshops. The last inspection shall be completed on or before the first day of October of each year, and the commissioner shall enforce all laws relating to the inspection of the establishments enumerated heretofore in this section, and prosecute all persons for violating the same. Any municipal ordinance relating to said

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establishments or their inspection shall be enforced by the commissioner. The commissioner, his assistants and deputy inspectors, may administer oaths and take affidavits in matters concerning the enforcement of the various inspection laws relating to these establishments: Provided, that the provision of this section shall not apply to mercantile establishments that employ less than ten persons that are located in towns and cities that have three thousand inhabitants or less."

Under the above section "mercantile establishments" are proper subjects of inspection by the Department of Labor and Industrial Inspection. The question is presented whether same applies "to retail mercantile establishments"?

In the case of Veazey Drug Company v. Bruza 169 Okla. 418, 37 Pac. (2d) 294, 1. c. 296, the court defines various terms, which are the subject of our inquiry:

"Thus from all of the definitions the word 'establishment' means an institution, place, building, or location. Its meaning, of course, may vary and does vary with the use of the word. The word 'mercantile' in its ordinary acceptance means pertaining to the business of merchants, and is concerned with trade or buying and selling of merchandise. People v. Federal Security Co., 255 Ill. 561, 99 N. E. 668; H. H. Kohlsaat & Co. v. O'Connell, 255 Ill. 271, 99 N. E. 689. In Carr v. Riley, 198 Mass. 70, 84 N. E. 426, 428, 'mercantile' is defined thus: 'Of or pertaining to merchants or the traffic carried on by merchants; having to do with trade or commerce, trading, commercial'. Thus while the word 'establishment' may mean almost any kind or character of institution, location, building, or place, yet its meaning is greatly restricted when used following the word 'mercantile.' And the expression 'mercantile establishment' must mean and refer to an institution of mercantile business, or a place, building, or location

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where the mercantile business or the buying or selling of merchandise is conducted or engaged in. One mercantile business or establishment may differ from another just as one merchant may differ from another merchant as to the character of business engaged in. So we have retail merchants or retail mercantile establishments upon the one hand, and wholesale merchants or wholesale mercantile establishments on the other hand.

"A mercantile establishment is a place where the buying and selling of articles of merchandise is conducted. *Hotchkiss v. District of Columbia*, 44 App. D. C. 73.

"The term 'mercantile business' is defined to mean 'the buying and selling of articles of merchandise as an employment' in *Graham v. Hendricks*, 22 La. Ann. 523.

"The term 'wholesale' or the selling in or by unbroken parcels is distinguished from 'retail' or dividing into smaller quantities and selling direct to consumers in *Gorsuth v. Butterfield*, 2 Wis. 237, and also in *Kentucky Consumers' Oil Co. v. Commonwealth*, 192 Ky. 437, 233 S. W. 892, and in *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* (C. C.A.) 227 F. 43."

From the definition of the term "mercantile establishment" it is evident that same is broad enough to include "wholesale" and "retail". If the Legislature had intended to limit the meaning of the term "mercantile establishment" to those places where the buying and selling of articles of merchandise is of unbroken parcels, it would have so stated, and any attempt on our part to give it such a limited meaning would be contrary to the plain meaning of the statute.

In the case of *Cummins vs. Kansas City Public Service Company* 334 Mo. 672, 66 S. W. (2d) 920, 1. c. 931, the Supreme Court said:

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"It is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction."

From the foregoing we are of the opinion that Section 13218 R. S. Mo. 1929, applies to retail mercantile establishments.

Respectfully submitted,

APPROVED:

MAX WASSERMAN
Assistant Attorney General.

COVELL R. HEWITT
(Acting) Attorney General.

MW/me