LABOR: (1) Municipally owned utility companies are subject to inspection by Labor Commissioner; (2) The prosecuting attorney of the county wherein the business establishment is located, shall enforce the provisions of Section 10180, R. S. 1939.

April 20, 1943.

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Hon. Orville S. Traylor
Commissioner of Labor
Jefferson City, Missouri

Dear Mr. Traylor:

This will acknowledge receipt of your letter of April 12, 1943, requesting an opinion from this Department. Your letter, omitting caption and signature, is as follows:

> "You will find enclosed an opinion by Arthur R. Wolfe, Assistant City Counselor of Kansas City, regarding the inspection by this Department of the municipally-owned utilities of Kansas City.
>
> "On July 3rd, 1934, your office gave an opinion to Mary Edna Cruzen stating that we could make such inspections.
>
> "In as much as other utilities have refused to pay this inspection fee, we would like to have an opinion from you as to what action we should take to collect such fees."

The purpose of the legislation in regard to labor is set out in Section 10153, R. S. Mo. 1939. This section provides as follows:

> "The object of this department shall be to collect, assort, systematize and present in annual report to the governor, to be by him transmitted biennially to the general assembly,

> statistical details and information relating to all departments of labor in the state, especially in its relations to the commercial, industrial, social, educational and sanitary conditions of the laboring classes and to the permanent prosperity of the productive industries of the state."

As can be noted from the above section, it was clearly the intention of the Legislature at the time this section was passed to enact this legislation for the protection of labor and for the maintenance of sanitary and healthful conditions for those people performing labor in different classes of employment.

The Legislature also enacted a law providing for the inspection of various types of businesses and manufacturing companies by the State Commissioner of Labor and Industrial Inspection, as provided in Section 10179, R. S. Mo. 1939. This section prescribes the following:

> "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 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."

It will be noted from the above provision that although this section does not make specific provisions for the inspection of municipal utility companies, or of any utility company, it does provide that the Commissioner shall make two inspections each year of all "manufacturing, mechanical and mercantile establishments and workshops." It would seem that the question involved in this opinion is whether or not a municipal utility company comes under the terms of a "manufacturing, mechanical or mercantile establishment."

It has been held in several jurisdictions that a person engaged in the generation of electricity is engaged in a manufacturing or mechanical business. See State ex rel. Winterfield v. Hardin County Rural Electric Co-op., 285 N. W. 219, 225, 226 Iowa 896; In re Charles Town Light and Power Co., 183 Fed. 160, l. c. 163; and McMillan v. Noyes, 72 A. 759, 762, 75 N. H. 258. Also see Angola Railway and Power Co., v. Butz, 98 N. E. 818, l. c. 820 (Ind.); Lucas v. Ashland Light, Mill & Power Co., 138 N. W. 761, 763, 92 Neb. 550; Lamborn v. Bell, 32 P. 989, l. c. 991, 18 Colo. 346, 20 L. R. A. 241.

As can be seen from a study of the above decisions a company organized for the purpose of generating and selling

electrical power, is, by the weight of authority, a manufacturing establishment or concern and would come under the terms of Section 10179, supra. There seems to be no question that persons engaged in the manufacture or handling of electrical current are subject to reasonable regulations and restrictions by proper authority in accordance with the statutes and municipal ordinances enacted in the proper exercise of police power. See 20 C. J., page 320, Sec. 23.

As stated above, Section 10179, R. S. Mo. 1939, was passed for the protection of the employees of different types of businesses, and the inspection fees as provided in Section 10180, R. S. Mo. 1939, is not a tax on the property of such business establishments but is merely an inspection fee. See State v. Vickens, 186 Mo. 103, 84 S. W. 908.

In the opinion of the Assistant City Counselor, which was attached to your request, there is a line drawn between utilities owned by private corporations and those owned by municipal corporations. We can see no merit in the contention that municipal utilities are not subject to the provisions of the sections of the statute cited above, merely because they are not specifically mentioned. We do not think it was the intention of the Legislature in enacting this law to include utilities operated by private interests and exclude those operated by municipalities, since in so doing the employees of the municipally owned utilities would not be afforded the same protection with regard to health and working conditions as those employed by a private enterprize. This certainly could not be the intention of the Legislature, as stated above.

Therefore, it is the opinion of this Department that the provisions of Section 10179, supra, relative to the inspection of labor conditions, apply to utility plants owned by a municipality.

Your request also contains a question as to how the inspection fees provided for by Sections 10179 and 10180, R. S. Mo. 1939, can be collected.

Section 10180 provides for the fees for inspection and also provides for the manner in which such regulations relative to the inspection of certain businesses can be enforced.

In view of the fact that this is a rather lengthly article, we will only cite that portion of such section as is applicable to the question herein involved. Such portion of Section 10180 reads as follows:

> "* * * Any person, firm or corporation, agent or manager, superintendent or foreman of any firm or corporation, whether acting for himself or for such firm or corporation, or by himself or through subagents or foreman, superintendent or manager, who shall refuse or attempt to prevent the admission of any inspector authorized by this article, upon or within the premises or building of any establishments or place which he is required by law to inspect, at any reasonable business hour, or during working hours of the persons employed therein or thereat, or shall in any manner interfere with the performance of the official duties of such inspector, or shall neglect or refuse to pay the inspection fee upon the completion of such inspection, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for each offense: * * * *"

As can be seen from the above provision, if any person, firm or corporation, agent or manager, superintendent or foreman of any firm or corporation shall refuse to permit their particular establishment to be inspected or shall in any way interfere with the inspection thereof, or shall neglect or refuse to pay the inspection fee upon the completion of such inspection, such persons shall be guilty of a misdemeanor and punishable by a fine in the amount set out in such statute.

Consequently, if there is a refusal to permit the inspection of any establishment set out in Article 4 of Chapter 68, R. S. Mo. 1939, or if any such establishment, or manager thereof, shall refuse to pay the inspection fee, complaint should be made to the prosecuting attorney of the county in which such

business is located and whose duty it is to enforce the provisions of this article.

Conclusion

Therefore, it is the opinion of this Department that a municipally owned utility company is subject to inspection by the State Commissioner of Labor and Industrial Inspection as provided by Section 10179, R. S. Mo. 1939. It is further the opinion of this Department that where there is a refusal of permission to inspect any business establishment set out in such section, or a failure or neglect to pay the inspection fee as provided by Section 10180, R. S. Mo. 1939, it then becomes the duty of the prosecuting attorney of the county wherein such business establishment is located to proceed in court to enforce the provisions of Article 4, Chapter 68, R. S. Mo. 1939.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG