CHILDREN:) Proviso in section takes precedence over the
) whole section.
LABOR:)

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June 11, 1943

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

Dear Sir:

This is in reply to your letter of June 2, 1943, in which you request an opinion from this department, as follows:

> "We have been asked by a great many people for an explanation of Sections 9620 and 9621, R. S. Missouri, 1939.
>
> "Section 9620 contains the following provision:
>
> "'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.'
>
> "Section 9621 contains the following:
>
> "'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.'

> "We would especially like to know if either or both of these sections take precedence over the other sections of the article. It seems to this Department that the two provisions quoted above are contrary to the other sections of this article.
>
> "We would also like to have your definition of the term 'industries' as it is used in both of these sections.
>
> "Due to the fact that the public schools have been dismissed for the summer, more children than usual are asking for work permits. For this reason we would appreciate a prompt reply."

Section 9620, R. S. Mo. 1939, reads as follows:

> "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."

The proviso under Section 9620, as set out in your request, refers to children between the ages of twelve and sixteen, who may be employed in industries that do not employ more than six persons. In other words, the proviso is an exception to the main general section and to other sections in the article, and the section in which it is included. Of course, all of the conditions included in the proviso must appear.

A proviso must be construed with reference to the immediately preceding parts of the clause or section to which it is attached. State ex rel. Crow v. The City of St. Louis, 73 S. W. 623, 174 Mo. 125, 61 L.R.A. 593. The preceding clause in Section 9620 prohibits the employment of any child in this state under the age of sixteen, unless otherwise authorized in Article 3, Chapter 56, R. S. Mo. 1939. The proviso then excepts children between the ages of twelve and sixteen who meet the requirements of the proviso to Section 9620.

In stating the rule as to a proviso becoming an exception to the section in which it is included, 50 C. J. page 831, states:

> "In a statute 'provided' may mean 'on' or 'upon condition.' It is said to be a rule, sustained substantially by all the authorities, that the usual office of the word 'provided' in a statute is to create a condition or to restrain the enacting clause, to except something which would otherwise be in it, or in some manner modify it. * * * * *"

Also, in the case of State v. Murphy, 148 S. W. (2d) 527, l. c. 532, Par. 13, the Supreme Court of this State, said:

> "Ordinarily the word 'provided' introduces a condition or exception and is often synonymous with 'if,' but sometimes, even in statutes, it has only the meaning of the conjunction 'and.' 50 C. J. pages 830, 831; Doneghy v. Robinson, Mo. Sup. 210 S. W. 655, loc. cit. 659; State ex rel. v. Mooneyham, 212 Mo. App. 573, 253 S. W. 1098."

The courts, in construing a proviso, must consider it as it reads and according to the actual words as appear

therein. Smith v. Pettis County, 136 S. W. (2d) 282. In reading the proviso to Section 9620 it can readily be seen that the proviso is an exception to the general law as set out in the article. In the case of State ex rel. Buchanan Co. v. Imel, 219 S. W. 634, l. c. 636, the court said:

> "While the effect of the proviso, under the general rule (Brown v. Patterson, 224 Mo. 639, 124 S. W. 1), was to restrict the preceding portion of the section, it became upon its adoption as much a substantive and operative portion of the original section as if incorporated therein when the latter was first enacted. * * * * * * * * * * * *"

The main part of Sections 9620 and 9621, as hereinafter set out, are general words stating the law, but the proviso describes a special class which should not be considered under the general law, that is, Sections 9620 and 9621, or other sections in Article 3, Chapter 56, R. S. Mo. 1939. In the case of McClaren v. G. S. Robins & Co., 162 S. W. (2d) 856, l. c. 858, the court said:

> "* * * The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified. Keane v. Strodtman, 323 Mo. 161, 18 S. W. 2d 896; Mangelsdorf v. Pennsylvania Fire Insurance Company, 224 Mo. App. 265, 26 S. W. 2d 818; Puritan Pharmaceutical Company v. Pennsylvania Railroad Company, 230 Mo. App. 848, 77 S. W. 2d 508."

Section 9621, R. S. Mo. 1939, reads as follows:

> "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."

This section merely sets out the time of employment, but the Legislature, again showing its intention and purpose, sets out a proviso, which, under the authorities set out under Section 9620, is an exception to the general law. The proviso also differs in that the industries coming within the proviso must employ only five or less employees and does not limit the age of the child in any manner, as set out in the proviso under Section 9620.

Two statutes relating to the same subject must be read together, and provisions of one having special application to a particular subject will be deemed a qualification of, or "exception" to other statute general in its terms. Eagleton v. Murphy, 156 S. W. (2d) 683, 348 Mo. 949, 138 A.L.R. 749.

Of course, there are many exceptions in the Laws of Missouri which are special in their nature and which should be followed even in cases which may come under the provisos as set out under Sections 9620 and 9621. We are herein setting out some of the sections which are special statutes and should govern in preference to the provisos above set out. Most of the sections are as to hazardous work where children cannot be employed. We refer you to factories

that employ explosives as set out under Sections 4665 and 4668; also to the punishment for employing children under hazardous occupations as set out in Sections 4665 and 4670. Also, the main exceptions and prohibited employment of children under the age of sixteen years, as set out under Section 9622. These being special statutes should be followed in preference to the general law. Where statutes dealing with the common subject matter are necessarily inconsistent the statute which deals with the subject matter in a minute and particular way will prevail over one of a more general nature. State v. Richman, 148 S. W. (2d) 796, 347 Mo. 595.

Your further question in your request is that you would like to have our definition of the term "industries" as it is used in both of the provisos of both sections. The Supreme Court of this State in the case of State ex rel. Kansas City Power & Light Co. v. Smith, 111 S. W. (2d) 513, l. c. 515, defined "industrial establishments" wherein they said:

> "The ordinarily accepted use of the phrase 'commercial establishment' denotes a place where commodities are exchanged, bought, or sold, while the ordinarily accepted meaning of the phrase 'industrial establishment' denotes a place of business 'which employs much labor and capital and is a distinct branch of trade; as, the sugar industry.' Webster's New International Dictionary. Thus, we see that the transportation of passengers would not come within the ordinary meaning of either the word 'commercial' or 'industrial.'"

Also, in the State of Washington the Supreme Court in the case of Dessen v. Department of Labor and Industries of Washington, 66 Pac. (2d) 867, 190 Washington 69, defined "industry" as any department or branch of art, occupation or business, especially one which employs much labor and capital and is a distinct branch of trade. Most of the other states consider that "industry" is any department

or branch of art, occupation or business and is especially one which employs much labor and capital and is a distinct branch of trade. In the case of State ex rel. Kansas City Power & Light Co. v. Smith, 111 S. W. (2d) 513, supra, the Supreme Court of this State distinguished commercial and industrial purposes, in that commerical was the sale of certain things and industrial was the production and manufacture of certain things. We, of course, must accept the definition of "industrial" which is synonymous to "industry" as the proper definition as set out by the Supreme Court.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the provisos contained in Sections 9620 and 9621, take precedence over the other sections of Article 3, Chapter 56, R. S. Mo. 1939, except such sections that are special sections prohibiting employment in certain occupations that are considered hazardous, and employment as prohibited and set out under Section 9622, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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WJB:CP