

Answer by Letter (Jones)

September 30, 1970

OPINION LETTER NO. 430



Dr. Robert T. Foster, President
Northwest Missouri State College
Maryville, Missouri 64468

Dear Dr. Foster:

This is to acknowledge receipt of your request for an opinion from this office in regard to whether or not the Board of Regents of Northwest Missouri State College are prohibited by the provisions of Sections 290.060 and 290.040, RSMo 1969, from employing a female teacher during the three weeks prior to and the three weeks following the birth of a child to such teacher.

Section 290.060, RSMo 1969, makes it a misdemeanor to knowingly employ a female in any of the various kinds of establishments specified in Section 290.040 within three weeks before or three weeks after childbirth. Section 290.040 provides that no female shall be employed more than nine hours during any one day, or more than fifty-four hours during any one week in any of the diverse kinds of establishments and places of industry therein described, including any public institution incorporated or unincorporated. The primary issue then is whether the Missouri Legislature intended to include Northwest Missouri State College within the term "public institution, incorporated, and unincorporated."

It is a firmly established rule of statutory construction that a state and its subdivisions and agencies are not to be

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considered as within the scope of a statute, however general and comprehensive the statutory language may be, unless the intention to include them is clearly manifest. 82 C.J.S., Statutes, Section 317 (p.554). This rule is applicable in construing a penal statute such as Section 290.040, RSMo 1969. In this connection, this office has previously advised in Opinion No. 25, April 17, 1953, Duncan, (copy attached) that the use of the phrase "public institution, incorporated or unincorporated," was not sufficiently clear and definite to manifest a legislative intent to include state hospitals therein.

It is therefore our view that Section 290.060, RSMo 1969, which makes it a misdemeanor for any person, firm or corporation to knowingly employ a female or permit a female to be employed in any of the diverse kinds of establishments, places of industry, or places of business specified in Section 290.040, within three weeks before or three weeks after childbirth, does not apply to female teachers of state colleges in Missouri. As a result of our views on this issue, the other questions that have been raised in regard to the constitutionality of Sections 290.040 and 290.060, RSMo 1969, are inapplicable.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 25
4-17-53, Duncan