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UNITED STATES DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

March 30, 1944

93

LEGAL FIELD LETTER

No. 93

Child Labor Opinions

Copies of child labor opinions rendered since the distribution of Legal Field Letter No. 86 are furnished herewith for your information. No opinions issued after December 31, 1943 are included. It should be re-emphasized that the opinions contained in these legal field letters are for use only by attorneys in the Office of the Solicitor.

Below is a chronological list of all opinions. In order to facilitate the use of this and the preceding legal Field Letters, Nos. 31 and 86, dealing with child labor, a descriptive word index covering all three has been prepared. Suggestions for its improvement are invited.

A separate descriptive Word Index to Legal Field Letters Nos. 31, 86 and 93 is also transmitted herewith for filing with the other indices to legal field letters

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March 3, 1943

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

SOL:JIN:MR

Irving J. Levy
Acting Solicitor

Request for opinion regarding coverage under section 12(a) of the Fair Labor Standards Act of certain occupations concerned with the harvesting and processing of flax

This is a reply to your memorandum of January 23, 1943, in which you ask for my opinion on the applicability of section 12(a) of the Fair Labor Standards Act to certain work performed by minors, as set out in Mr. Elrey's letter attached to your memorandum. I understand that the work performed by the minors is in connection with the unloading of trucks in which the farmers bring the raw product to the warehouse; in the field where the flax is dried after being subjected to retting processes; and in the storage warehouse where the flax is stored after having been dried in the fields.

(1) The unloading of the farmers' trucks.

No categorical answer can be given to this question; the answer depending upon the facts involved in the particular case. The decisive test would be whether the unloading takes place in the workroom or workplace where goods are manufactured or processed, and whether it involves the operation or tending of hoisting apparatus or other power driven machinery. Unloading of itself could not be classified as oppressive child labor, and so long as it does not involve the operation or tending of hoisting apparatus or power driven machinery (which is deemed hazardous), section 12(a), in the light of Regulation 3, would not be violated. This section and regulations issued pursuant thereto, prohibit the employment of minors in any establishment where goods are "manufactured" or "processed." Clearly the retting and scutching of the flax is a process, and if the unloading is done in a workroom or workplace where these processes are being performed, the work would be contrary to Regulation 3 issued pursuant to section 12(a) of the Fair Labor Standards Act.

(2) The drying of flax in the fields:

This work is in no sense a hazardous occupation and is prohibited only if it may be considered "processing." As I understand the facts stated in Mr. Elrey's letter the processing of flax involves two operations; first, retting, and second, deseeding or scutching. Between these two operations the flax must be dried, sunrays being used for the purpose. In Johnson v. Foos Mfg. Co., 141 Fed. 73, 85, the court quoted and adopted the following definition of "processing" given in Cochrane v. Deener, 94 U.S. 780:

> "A process is a mode of treatment of certain materials to produce a given result. It is an act or series of acts performed upon the subject-matter to be transformed and reduced to a different state or thing."

The dictionary (Webster's New International, 2d Ed.) gives the following definition:

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> "To subject to some special process or treatment. Specif.: a. To heat, as fruit, with steam under pressure, so as to cook or sterilize. b. To subject (esp. raw material) to a process of manufacture, development, preparation for the market, etc; to convert into marketable form, as livestock by slaughtering, grain by milling, * * *."

It would seem that the drying of the flax under the circumstances mentioned, is an integral part of the entire process of producing combed flax fibre. Certainly the combed flax and the by-product flaxseed can not be obtained unless the flax is dried by some method between the retting and the scutching. Means other than the heat from the sun could be employed, and certainly this would be processing. The mere fact that sunrays are used for drying does not mean that the processing has been suspended during the drying operations.

It is therefore my view that the drying of the flax by sunrays is a part of the process of producing the flax fibre and other by-products from the raw flax. Accordingly, the employment of minors between the ages of 14-16 in such work is prohibited by Regulation No. 3.

My opinion is, of course, based on the assumption that the combed flax or the by-product of its manufacture, is shipped in interstate commerce. It is also based on the assumption that the drying fields and the plant in which the retting and scutching take place constitute one establishment. If the drying fields are a separate establishment, then the question arises as to whether drying by sunrays of itself when nothing is done by man or by machinery, is a "process" within the meaning of Regulation No. 3. On this point I prefer not to take a definite position until I have had an opportunity to discuss with you and the Chief of the Children's Bureau just what was intended to be covered by the term "processing"; that is whether it was intended to cover only processing by man, or by man with the aid of machinery, as distinguished from processing by nature. I might say, however, that I would be inclined to the view that drying by sunrays alone would be "processing."

(3) Work in the warehouse:

This question is closely related to that of unloading heretofore discussed. If, as in the ordinary case, the work in the warehouse is not to be classed as "manufacturing" or "processing" occupations I believe that minors between 14 and 16 may be employed subject to the terms and conditions set forth in Regulation No. 3. This is true irrespective of whether the work be classed as heavy or light tasks. Here again it must be borne in mind, however, that Regulation No. 3 does not permit the employment of minors in any workroom or workplace where goods are manufactured or processed. If the warehouse is a workroom or workplace where the retting or scutching occurs, minors could not be employed therein.

(01376)

MEMORANDUM

To: Miss Fuhrman March 15, 1943

From: Miss McConnell

Re: Sibulkin Leather Company

In your memorandum of February 23 you submitted more detailed facts in connection with the company's desire to employ minors between 14 and 16. You now request specific answers in the three types of situations mentioned.

The facts as given appear to be as follows : The company supplies shoe findings to shoe manufacturers and does no shoe manufacturing itself. The company purchases leather scrap which is first sorted to size and then placed in stock. The leather is then cut. After being cut certain paper pieces are removed from the leather. Such removal takes place just before the cut pieces are delivered to the manufacturer. The leather leftovers are sorted so as to salvage any usable pieces which are again placed in stock. It is proposed to employ such minors on errands between the Sibulkin Leather Company and its manufacturer customers in delivering goods, etc., to remove the paper pieces referred to and also to sort the leather pieces both before and after cutting.

You will recall that in my previous letter to George A. Picard concerning this company I expressed the opinion that "any occupation involved in the manufacture of a product from the assembling of the raw materials for manufacture to the completion of the manufactured article is a part of the manufacturing process and, therefore, a manufacturing occupation." Applying this principle to the facts as given, I have reached the following conclusions. In my opinion the employment of minors between 14 and 16 to deliver goods which have been manufactured by the company to the company's customers would be permissible. This assumes, of course, that such minors do not work out of any work rooms or work places where manufacturing or processing is done. The second situation involves the employment of minors in the removal of the paper pieces described above. This occupation would not be permissible since the operation involved cannot, in my opinion, be distinguished from the cutting of the leather itself, both operations being necessary steps in the manufacture of the findings in preparation for sale. This operation should, therefore, be regarded as a manufacturing occupation. The third situation involves the sorting of the leather pieces. In my opinion manufacturing is not involved where the leather is sorted after purchase and placed in stock for later manufacture. In this situation manufacturing cannot be said to have commenced. A similar result would obtain after the leather has been cut where the leftovers are first removed and then sorted. There, the sorting would be clearly separated from the prior manufacturing operations. If, however, the sorting takes place immediately after the leather has been cut the same result would not necessarily follow. The problem is a close one and I feel need not be decided at this time since such sorting would probably take place in the work room or work place where manufacturing was done, in which case the 16 year minimum would apply.

SOL:CMJ:ASK

(01376)

March 16, 1943

Honorable William G. Long
Judge of the Superior Court
Seattle, Washington

Dear Judge Long:

I have received your letter of March 11, 1943, requesting my opinion (1) whether firms which are engaged in the manufacture of products only a small incidental portion of which flows in interstate commerce are covered by the child labor provisions of the Fair Labor Standards Act; and (2) whether an under-age minor may be employed in the production of goods for intrastate commerce in an establishment also producing goods for interstate commerce.

With respect to the first question, the proportion of a firm's goods which moves in interstate commerce is immaterial in determining whether it has violated the child labor provisions of the act if such firm employs oppressive child labor. Section 12(a) of the act renders it unlawful to ship or deliver for shipment any goods produced in an establishment in or about which oppressive child labor has been employed within 30 days of the period in which such goods were removed therefrom. If oppressive child labor is employed in a producing establishment, therefore, and if within 30 days of the period of such employment, any goods are removed for shipment or delivery for shipment in interstate commerce, section 12(a) of the act has been violated irrespective of the fact that the overwhelming proportion of the total output of the establishment is sold within the State.

With respect to your second question, it is impossible for an establishment employing oppressive child labor to avoid violations of section 12(a) by segregating the intrastate and interstate portions of its business. You will note that under section 12(a) an under-age minor must merely be employed "in or about the establishment" to render shipments from such establishment in interstate commerce illegal. The mere fact that the minor was employed entirely in connection with the intrastate business would not make the interstate shipments lawful so long as the minor was employed "in or about the establishment."

Not all employment of minors under 16 years of age constitutes oppressive child labor, however. Section 3(l) of the act declares that the employment of minors between 14 and 16 years of age in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment will not interfere with the schooling or with the health or well-being of such minors. Pursuant to this provision, the Chief of the Children's Bureau has issued Child Labor Regulation No. 3, a copy of which is attached, enumerating the occupations in and the conditions under which minors between 14 and 16 years of age may be employed. You will note from section 441.2 of this Regulation that subject to the hours restrictions in section 441.3 of the Regulation, minors between 14 and 16 years of age may be employed in most occupations other than manufacturing, mining or processing occupations so long as they are not required to perform any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed.

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In her memorandum transmitting your letter of March 11, Miss Perry states that you are desirous of information whether minors under 16 years of age may be employed in counting and stacking dividers for egg-packing boxes in the establishment in which the dividers are produced. It is my opinion that the production of the dividers constitutes manufacturing and that minors under 16 years of age could not lawfully be employed in any occupation connected with such production. If the counting and stacking operations occur in connection with the storage or shipment of the dividers and after the manufacturing process has ceased, such counting and stacking would not be a manufacturing occupation and could, therefore, be performed by minors between 14 and 16 years of age. In order for such employment not to constitute oppressive child labor, however, the counting and stacking would have to take place in a work room or work place other than that in which the manufacturing occurs.

I trust that the above sufficiently answers the questions which you have in mind. If you are in need of any additional information, please do not hesitate to call upon me.

Very truly yours,

Beatrice McConnell
Director, Industrial Division

Enclosure

SOL:JS:ASK

(01376)

Kenneth P. Montgomery
Regional Attorney
Kansas City, Missouri

March 23, 1943

SOL:JIN:ARS

Charles R. Reynolds, Jr.
Assistant Solicitor

Child Labor Problems

This will reply to your memorandum of February 20, 1943 (Case CL:KPM:REH) directed to Donald M. Murtha. I call your attention to the fact that all inquiries on child labor problems should be directed to this office, rather than to New York.

* * *

Minors employed as elevator operators in office buildings:

Section 12(a) of the Fair Labor Standards Act prohibits the shipment, or delivery for shipment, of any goods produced in an establishment in or about which oppressive child labor has been employed. The question here presented is whether the operation of the elevator may be considered as work in or about an establishment where goods are being produced for commerce.

The Fair Labor Standards Act is legislation remedial in nature and must be construed liberally to the end that the intended purpose of Congress may be achieved. In the Kirschbaum case, it was held that elevator operators, porters, etc., employed in a loft building wherein tenants were producing goods for commerce, were engaged in a process necessary to the production of such goods. In the case you present, it is my understanding that the tenant engaged in the production of goods for commerce occupies a portion of a large building wherein other tenants are not engaged in production, and that the elevator serves the needs of all the tenants. The elevator is obviously engaged in hauling passengers up to the floor where production takes place and, perhaps goods to and from this floor, though your question does not so state. It would appear, therefore, that the elevator operator is engaged in a process necessary to the carrying on of the business of the producing establishment and since his work is sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term "about," it is my view that his work is being performed in, or about an establishment where goods are being produced within the meaning of section 12(a). Consequently, if oppressive child labor is employed in or about the establishment where the goods are being produced, the shipment of such goods, or their delivery for shipment, in interstate commerce is prohibited.

The employment of a minor between 16 and 18 years of age as an elevator operator is not deemed oppressive child labor, since it is not covered by any of the hazardous occupation orders issued by the Chief of the Children's Bureau. However, the employment of a minor between 14 and 16 years of age would be in violation of Regulation No. 3, which forbids the operation of hoisting apparatus by such minors.

(01376)

April 21, 1943

To: Miss Beatrice McConnell
Director of Industrial Division
Children's Bureau

From: Charles R. Reynolds, Jr.
Assistant Solicitor

Re: Coverage under Section 12(a) of minors employed to feed and water cattle that were in stock yards waiting to be sold

This is in reply to your memorandum of April 5, 1943, in which you inquire concerning coverage under section 12(a) of the Fair Labor Standards Act of minors employed to feed and water cattle that were at stock yards waiting to be sold. You state that this cattle is not stationed in or about a slaughterhouse or meat packing house, but is kept in fenced areas awaiting sale or shipment. You present the question of whether the stock yards in question would be considered a producing establishment so as to bring the minors in its employ within the scope of coverage of section 12(a) of the act.

In our memorandum to Miss Lenroot, dated April 6, 1942, we expressed the view that the term "produced" requires some operation on goods which in some manner changes their nature or form and that the term does not apply where an establishment merely handles, moves or transports goods without more. We further expressed an opinion that a wholesale establishment which merely handles, moves or transports goods without more, is not a "producing" establishment within the meaning of section 12(a) of the act. In our memorandum to you, dated August 11, 1942, on the subject of the "applicability of section 12(a) to employees of railroads," we stated that the handling or transporting of goods and passengers at railroad stations would not in our view constitute a production of goods and that section 12(a) would not be violated if goods were shipped in commerce by the railroad station or ticket office, even though minors under the permissible age limits set in section 3(l) of the act were employed in the station or office. In a further memorandum to you of September 25, 1942, on the subject of the applicability of child labor provisions to "crew callers" we alluded to our memorandum of April 6, 1942, on the applicability of child labor provisions and further stated with respect to the subject of a "producing establishment" that it is not sufficient if the establishment merely moves or stores the goods as a separate venture, and a freight office unlike a round house is not engaged in operations which ordinarily change the nature or form of the goods. Hence, a minor working out of a freight office cannot be said to be employed in or about an establishment in which goods are produced.

It is our view that the above referred to principles are equally applicable to the stock yard establishment you refer to which merely handles cattle preparatory to their shipment and is not under the circumstances engaged in the performance of any operations on the cattle which could be regarded as constituting the yard a producing establishment.

(01376)

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

SOL:AGW:ELW

Charles R. Reynolds, Jr.
Assistant Solicitor

April 29, 1943

Application of the Fair Labor Standards Act to the Employment of Children of a Share Cropper on Farm Operated by the Share Cropper.

Your memorandum of March 10, 1943, concerning the relationship existing in Alabama between a share cropper's family and the owner of the land which they cultivate has been given careful consideration.

Neither your memorandum nor the file attached thereto contains a detailed statement of the terms of the agreement existing between the owner of the land in question and his share cropper. The typical relationship as I understand it is created by an oral agreement which goes no further than to provide that the landlord shall put a certain plot of land at the disposal of the share cropper, that certain items of equipment will or will not be supplied by the landlord and that the tenant shall furnish his labor and in addition may or may not supply teams or other equipment. While a relationship of this type has some of the characteristics of an employment relationship it is my opinion that in Alabama it is one of landlord and tenant even where the tenant supplies only his own labor and that of his family and the owner supplies all of the necessary tools.

The determinative factors in characterizing the relationship are to my mind those legal incidences which flow from the relationship. Alabama has by specific statutory enactment (Title 31, Sec. 22, Code of Ala., 1940) denominated the relationship as one of landlord and tenant. This labeling of the relationship is of course not binding in connection with the interpretation of the meaning of a Federal statute. It is, however, a well recognized legal principle that where rights under State law become material to the application of Federal statutes, the law of the State where those rights arise must be looked to to determine what those rights are. Thus, a married resident of a State not having the community property rule must include all of his earnings in his Federal income tax return. On the other hand, a married resident of one of the States having the community property rule need report only one-half of the income actually earned by him and his spouse may report the other half as income to the latter. (See Herder v. Helvering, 106 F.(2d) 153; see also Commissioner of Internal Revenue v. Blair, 60 F. (2d) 340, certiorari denied, 53 Sup. Ct. 386, 288 U. S. 602, where the court held that the liability of trust income for Federal tax must be determined by the law of the State wherein the beneficiary resided and the trust property was located.)

In Alabama the share cropper is the owner of the crop and the landlord's interest is only that of a lien holder. In Kilpatrick v. Harper, 119 Ala. 452, 24 So. 715 (1898) the land owner was sued by the share cropper in detinue for taking away the entire crop. The court held that the relationship was one of landlord and tenant, that the crop

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belonged to the tenant and that although the landlord had a lien for rent the tenant was entitled to possession of the crop. See also Martin v. Scott, 14 Ala. App. 230, 69 So. 309, in which it was held that a landlord cannot maintain an action in trover against the tenant for failure to turn over to the landlord his share of the crop since the landlord has no property interest in the crop but only a lien on the crop. Likewise, the share cropper appears to be entitled to the exclusive possession of the land he farms for the duration of his contract as well as the crops. (See Heaton v. Slaton, 25 Ala. App. 81, 141 So. 267, which contains a good discussion of the rights of a landlord and tenant; and see also Stewart v. Young, 212 Ala. 426, 103 So. 44, construing a law, since repealed, which labeled some share cropping arrangements as one of hire rather than of tenancy.) In addition Title 31, secs. 2 and 3 of Code of Alabama, 1940, appear to specify where no other term of tenancy is expressly set by the parties that a share cropper's tenancy as well as other types of tenancies shall run from December 1, until December 1. A tenancy of such a nature would be quite inconsistent with the relationship of an employer-employee relationship. In view of these rights created under Alabama law it is my opinion that as stated above, the relationship in Alabama is one of landlord and tenant and not one of employment and that a similar contract with relation to the cultivation of land in some other State may or may not result in relationship of employer and employee within the meaning of the Fair Labor Standards Act.

Inasmuch as the share cropper is not considered an employee of the land owner and inasmuch as the crop on which the work is performed belongs to the share cropper, his children would be considered as being employed by him in his enterprise rather than as being required, suffered or permitted to work by the landlord.

Your file and the copy of "Farmer Tenancy" are returned herewith.

Attachments (2)
(File)

(01376)

May 1, 1943

Mr. G. D. McClaskey
Educational Director
Kansas Poultry Institute
Topeka, Kansas

My dear Mr. McClaskey:

Miss Haisch, our child labor consultant in Kansas City, has advised me that you did not feel my letter of April 5 adequately answered the questions you had raised in your earlier communication addressed to Miss Haisch. I shall try to clarify the statements made in my earlier letter, although, as I think you realize, it is not always possible to state a principle of coverage which would apply to all situations without knowing the facts of the given situation.

Your first question is as to what minimum age would apply to minors employed in buying stations, whose chief work would be removing farmers' deliveries from cars to the buying stations. Such work would be permissible for minors of 14 and 15 years of age provided they are employed subject to the periods of time set forth in section 441.3 of Child Labor Regulation No. 3. If, however, any other part of their work at the stations consists in manufacturing or processing or is work performed in any work room or work place where goods are manufactured or processed, regardless of the percentage, the minimum age then required would be 16.

Children of 14 or 15 years of age may not be employed in the stations if their work constitutes manufacturing or processing or involves any duties in a work room or work place where manufacturing or processing is carried on. As I advised you in my letter of April 5, if you will give us further information regarding the exact nature of the other work carried on in the buying stations, we shall be glad to give you a more specific answer as to whether such work constitutes manufacturing or processing. Upon the receipt of such information, I can determine definitely whether the 14 year minimum or the 16 year minimum is applicable for such work.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

BMcC:CMJ:lg;flc

(01376)

To: Miss Beatrice McConnell, Director
Industrial Division
Children's Bureau

May 11, 1943

From: Charles R. Reynolds, Jr.
Assistant Solicitor

SOL:HC:JR

Subject: Application of Regulation No. 3 to composing room of a printing establishment

This refers to your memorandum of April 17 addressed to Mr. Levy in which you request an opinion whether the employment of a 15-year-old minor in the composing room of a printing company constitutes oppressive child labor within the meaning of Child Labor Regulation No. 3.

You do not give specific description of the activities performed in the composing room in which the 15-year-old minor is employed but you indicate that mats are assembled and sent to the printing room, after which they are returned to the composing room and are dismantled. The minors then separate the leads, slugs and type, and distribute them to the bins, although they do not clamp and unclamp them from the mats. In most printing offices a number of power-driven machines are operated in the composing room. There are type setting machines used to set up type and a hand cutting and mitre machine. Further, in smaller printing establishments, a melting apparatus may be set up in the composing room which casts the forms into metal after they have once been discarded from the mats.

The operations described above would appear to be an integral part of the general manufacturing or processing of the finished printed production. The minors who distribute the leads, slugs or type in the composing room in which such operations are carried on, therefore, are employed in a workroom or work place where manufacturing or processing activities are performed. It is our opinion that the employment of minors between 14 and 16 years of age in such a composing room, therefore, is outside the exemption granted by Child Labor Regulation No. 3 and constitutes oppressive child labor within the meaning of section 3(l) of the Fair Labor Standards Act.

(01376)

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
Interoffice Communication

May 13, 1943
SOL:HK:DMH

To: Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

From: Charles R. Reynolds, Jr.
Assistant Solicitor

Subject: Whether minors employed to feed and water poultry in a portion of a building other than that in which the poultry is slaughtered or in an adjacent building are employed "in or about" the producing establishment under Section 12(a).

This will reply to your memorandum of April 6, in which you inquire concerning the coverage of section 12(a) of the act of minors employed to feed and water turkeys and chickens which are kept on the fourth floor of a building in which the first, second, and third are used for killing and dressing the poultry. You state that in other establishments the pens where the live poultry is kept are on the first floor and in one instance in sheds across an alley from the killing and processing rooms. You inquire as to whether the employment of oppressive child labor in establishments described in these situations comes within the scope of coverage of section 12(a) of the act.

It seems clear that the killing and dressing of the poultry constitute the production of goods within the meaning of section 12(a) of the act. Your memorandum, however, presents the question of whether the minors in question would be employed first of all in the establishment in which goods are being produced within the meaning of section 12(a), and second (assuming the minors are not employed in the producing establishment) whether they are employed about the establishment in which goods are being produced.

It is our view that where an entire building is occupied by a single business enterprise, it is a single "establishment" within the meaning of section 12(a). If goods are produced in such a building, minors employed in any part thereof are employed in an establishment in which goods are produced irrespective of whether the production takes place in the same part of the building in which the minors are employed.

It may be that the minors performing duties in sheds across an alley from the building where the killing and dressing of the poultry take place are employed in a producing establishment within the meaning of section 12(a). In any event, however, it is our view that such minors are employed about an establishment in which goods are produced. Where a minor is employed by a producing establishment outside the physical limits of the building in which the actual production takes place, his employment should be considered "about" the establishment if it meets the following two tests: (a) That it is sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term

(01376)

"about", and (b) That the occupation engaged in by the minor is directly related to the activities carried on in the producing establishment. It would seem that at least occupations which are "necessary to the production of goods" within the meaning of section 3(j), as broadly interpreted in the Kirschbaum decision, are sufficiently related to the activities carried on in the producing establishment to meet the second test referred to above. The employment of the minors in the sheds, which are located across the alley, to feed and water poultry would appear to meet these two tests, and hence their employment is about a producing establishment within the meaning of section 12(a).

May 14, 1943

Mr. John Edwards
Bumpass
Virginia

Dear Mr. Edwards:

This will reply to your letter of April 15, 1943 in which you inquire whether you have the right to work your 14 year old son to help you cut logs by the thousand for a sawmill.

Section 3(l) of the Fair Labor Standards Act, a copy of which is enclosed, permits the employment of a minor under the age of 16 years by a parent in any occupation other than manufacturing or mining. The cutting of logs where it takes place as part of general "logging" operations would be non-manufacturing in nature, and would, therefore, be within the parental exemption. However, if such cutting takes place at the sawmill, such work must be regarded as part of the manufacturing operations at the sawmill. In the latter case the employment of a minor under 16 by his parent would not be permissible.

It should be noted that the parental exemption mentioned above applies only where the minor is employed by his parent. If your son or you are employed to do this work by the sawmill or if the sawmill exercises any supervision or control over such work, the parental exemption would not apply, since the sawmill would then be regarded as the employer.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

Enclosure (1)

SOL:CMJ:FLC

(01376)

May 14, 1943

Gregory Stockard, Esquire
Stockard and Stockard
Jefferson City, Missouri

Dear Mr. Stockard:

This is in reply to your letter of April 21, 1943, in which you request information concerning the application of the child labor provisions of the Fair Labor Standards Act to cooperative rural electrification projects which you represent in Missouri.

Section 12(a) provides that no producer, manufacturer, or dealer may ship directly or ship indirectly (that is, deliver for shipment) in interstate commerce any goods produced in an establishment in or about which any oppresive child labor has been employed within 30 days prior to the removal of such goods. The term "goods" which is defined in the act as "articles or subjects of commerce of any character" includes electricity. The term "produced" is defined to mean "produced, manufactured, mined, handled, or in any other manner worked on in any State". In our opinion, under this broad definition, not only generating plants but also stations operated by rural electrification projects at which high voltage electricity purchased from public utilities is transformed to low voltage electricity suitable for use by consumers are to be regarded as producing establishments.

* * *

We are enclosing a copy of the act, Child Labor Regulation No. 3, and Hazardous Occupations Orders 2 and 5, which may have possible application to such projects. Please do not hesitate to inquire further as to any specific cases as to which you may be in doubt.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

SOL:CMJ:FLC

(01376)

May 20, 1943

Mr. John D. Aubry
Arthur Walter Seed Company
Grand Ridge, Illinois

Dear Mr. Aubry:

This is with reference to your letter of May 15, 1943 requesting our opinion whether minors under 14 years of age may be employed on farms in pulling tassels from corn stalks.

Section 3(l) of the Fair Labor Standards Act of 1938 establishes a basic minimum age of 16 years for the employment of minors in establishments subject to the provisions of the act. Section 13(c) of the act, however, exempts from its child labor provisions the employment of any person in agriculture "while not legally required to attend school." Employment of minors in agriculture, therefore, is totally exempt from the Federal child labor law while such minors are not legally required to attend school. During the period when they are required to attend school, however, the minimum age provisions of the law apply.

Agriculture is defined in section 3(f) of the act to include any practices "performed by a farmer or on a farm as an incident to or in conjunction with such farming operations." Your letter indicates that all of the work of the minors in question would be performed on the farm. Under these circumstances it is our opinion that such employment would be "employment in agriculture" within the meaning of the act and that the exemption granted from the child labor provisions would, therefore, apply during the period while the minors were not legally required to attend school.

I should like to call to your attention section 18 of the Fair Labor Standards Act which provides that "no provision of this act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standards than the standard established under this act." Even though the child labor provisions of the Fair Labor Standards Act do not apply to the employment of the minors in question, therefore, such employment would still be subject to the State child labor laws.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

Enclosure

SOL:JS:FLC

(01376)

June 5, 1943

SOL:JS:FLC

W. R. Carpenter, Esquire
Carpenter & Carpenter
Attorneys at Law
Marion, Kansas

My dear Mr. Carpenter:

This is with reference to your letter of May 26, 1943, requesting permission of the Chief of the Children's Bureau to employ a 15 year old boy to wash milk cans and make boxes in a creamery. The creamery is engaged in the manufacture of butter and ice cream.

Section 3(l) of the Fair Labor Standards Act establishes a basic minimum age of 16 years for the employment of minors in establishments subject to the child labor provisions of the act. An exception is granted by section 3(l) which permits the employment of minors between 14 and 16 years of age in occupations other than manufacturing and mining to the extent that the Chief of the Children's Bureau has found that such employment will not interfere with the schooling nor with the health or well-being of such minors. I am enclosing for your information a copy of Child Labor Regulation No. 3 which sets forth the conditions under which minors between 14 and 16 years of age may be employed in establishments subject to the child labor provisions of the Fair Labor Standards Act.

You will note that not only this Regulation but section 3(l) of the act itself establishes a minimum age of 16 years for the employment of minors in manufacturing occupations and the Chief of the Children's Bureau has no authority to issue an order permitting the employment in a manufacturing occupation of a minor under that age. Since the making of boxes is clearly a manufacturing occupation, the employment of a 15 year old minor to make boxes would constitute oppressive child labor. Also, under section 441.2(a) of Child Labor Regulation No. 3 the employment of a minor to wash milk cans in a work room or work place where butter or ice cream is manufactured would constitute oppressive child labor. The washing of milk cans under the conditions set forth in the Regulation, however, is permissible for minors between 14 and 16 years of age.

I trust that the above sufficiently answers the question which you have raised. If you are in need of any additional information, please do not hesitate to call upon me.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

Enclosure

(01376)

June 8, 1943

Miss Beatrice McConnell
Director Industrial Division
Children's Bureau

SOL:HG:IJL:LHP

Irving J. Levy
Acting Solicitor

Application of Hazardous Occupations Order No. 3 to Minors under 18 Years of Age Employed in a Bagging Plant Located one or two miles away from a Coal Mine

This refers to your memorandum requesting an opinion on the subject mentioned above. I regret the delay in submitting this opinion.

The subject company owns and operates a bagging plant located at a distance of about "one or two miles" from the mine and breaker. The bagging operations take place after the coal has been mined and put through the breaker. The coal moves on a belt arrangement, the flow of which is controlled by a lever operated by the minors. The work of bagging consists of pulling a lever and the bag is automatically filled. Other operations in question are the tying and preparing of the bags, sweeping the floor, sweeping empty box cars, and helping to load bags in the cars.

The question raised is whether Hazardous Occupations Order No. 3 prohibits the employment of minors under 18 years of age in such occupations.

The pertinent parts of Order No. 3 read as follows:

> "(b) Order--Accordingly, I hereby declare that all occupations in or about any coal mine, except the occupation of slate or other refuse picking at a picking table or picking chute in a tipple or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal-mining plant, are particularly hazardous for the employment of minors between 16 and 18 years of age." /Underlining supplied./

The term "all occupations in or about any coal mine" is defined:

> "(2) The term 'all occupations in or about any coal mine' shall mean all types of work performed in any underground working, open-pit, or surface part of any coal-mining plant, that contribute to the extraction, grading, cleaning, or other handling of coal." /Underlining supplied./

There are two issues presented: (1) Whether bagging activities were intended to be covered by the Order, and (2) whether the covered occupations take place "in or about" the mine.

With reference to the first issue, it should be noted that the term "all occupations" as it appears in the above definition is limited to work which contributes "to the extraction, grading, cleaning, or other handling of coal." The words "or other handling of coal" may be sufficiently broad to encompass all activities -- including bagging -- involving the physical handling of coal in or about any coal mine. But slate or other refuse picking is expressly excluded, and the limitation that the operations must be performed in the "underground working, open-pit or surface part of any coal-mining plant" add further restrictions to the scope of the regulations.

(01376)

In view of the ambiguous language in the Order, therefore, resort should be had to the hearings which preceded the promulgation of the Order to determine which occupations were intended to be covered by the Chief of the Children's Bureau when the Order was written. It appears that bagging operations were not considered at this hearing. I am advised by Mr. Homan, that the reason for the absence of any discussion of bagging operations at the hearing was that such operations relate to the distribution and not the mining of coal and are seldom performed by coal mining plants. In view of this fact it does not seem that bagging operations are among those included within the scope of Hazardous Occupations Order No. 3. Accordingly, in my opinion, minors between 16 and 17 years of age may be employed in such occupations.

On the basis of this conclusion, it is unnecessary to decide whether the activities in the bagging plant are performed "in or about any coal mine," since the activities themselves do not fall within the term "all occupations" as defined in the Order.

(01376)

June 11, 1943

Miss Mary M. Wootton
Supervisor, Permit Department
Office of Commissioner of Labor and Statistics
120 West Redwood Street
Baltimore, Maryland

Dear Miss Wootton:

Mrs. Noll has requested that I furnish you with our opinion whether the Camden Warehouse of the Baltimore and Ohio Railroad is covered by the child labor provisions of the Fair Labor Standards Act. According to the description given in Mrs. Noll's letter it appears that nothing except the mere handling of goods takes place in the warehouse and that no operations are performed upon such goods.

As you know, the Federal child labor law applies only to establishments in which goods are produced for shipment or delivery for shipment in commerce. Although the term "produced" is very broadly defined in the act, it is our opinion that something more than the mere handling of goods is necessary before production takes place. If only the handling of goods takes place in the Camden Warehouse, therefore, the provisions of the Federal child labor law would not apply to that establishment.

Sincerely yours,

ELIZABETH B. COLEMAN
Assistant Director in
Charge of Administration
Industrial Division

SOL:JS:FLC:ETL

cc V. Noll
Schermerhorn
Schlezinger
Central Files

(01376)

June 25, 1943

SOL:JS:FLC

The Baraboo News Publishing Company
Baraboo, Wisconsin

Attention: Managing Editor

Gentlemen:

This is with reference to your letter of March 25, 1943 to Miss Alice Shoemaker of the Wage and Hour Division, Madison, Wisconsin, which has been referred to me for reply. I wish to apologize for the delay in answering your letter.

Section 12(a) of the Fair Labor Standards Act of 1938 prohibits the shipment or delivery for shipment in commerce of goods produced in establishments in or about which oppressive child labor is employed. Oppressive child labor is defined in section 3(l) of the act to include the employment of any minor under 16 years of age. An exception from the basic 16 year minimum is granted, however, for the employment of 14 and 15 year old minors in occupations which the Chief of the Children's Bureau has found will not interfere with the schooling or with the health or well-being of such minors.

Enclosed herewith is a copy of Child Labor Regulation No. 3 which lists the occupations in and the conditions under which the employment of minors between 14 and 16 years of age does not constitute oppressive child labor. You will note that the periods during which such minors may be employed are listed in section 441.3. Paragraphs (f) and (g) of that section refer specifically to the employment of minors in the distribution of newspapers.

The mere fact that the newsboys would not come in contact with printing machinery does not affect their coverage under the child labor provisions of the act. You will note that section 12(a) applies to the employment of oppressive child labor in or about any establishment in which goods are produced for shipment or delivery for shipment in commerce irrespective of whether the minors employed have any connection with the productive activities of the establishment. If the building from which the newsboys would obtain their papers is a part of the newspaper establishment, the presence of the newsboys in such building would cause the shipment or delivery for shipment in interstate commerce of the newspapers produced in the establishment to be violations of section 12(a).

I hope that the above furnishes you the information you desire. If I can be of any additional assistance, please do not hesitate to call upon me.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

Enclosure

(01376)

Miss Beatrice McConnell, Director
Industrial Division
Children's Bureau

July 2, 1943

Douglas B. Maggs
Solicitor

SOL:WST:DMH

Employment of children on farms located on the grounds of an Ordnance Plant

Your memorandum of June 14, 1943, asks whether the employment of minors under the circumstances set out by you is within the exemption provided by section 13(c) of the act or whether such employment falls within the provisions of Hazardous Occupations Order No. 1.

You state that the Elwood Ordnance Plant is located on a tract of land which is owned by the War Department. Some of the land located within the enclosure which separates the plant from adjoining land has been leased by the Government to local farmers. These farmers cut the grass and hay and other products, working on or about the grounds of the Ordnance plant. This work is performed within the enclosure which separates the plant from the adjoining farm land. You further state that several farmers who have leased this land wish to have their sons help them in these operations on the grounds of the company and that some of the boys are under 18 and some under 16 years of age.

The first point we shall consider is whether these operations would be exempt from section 12(a) of the act under the provisions of section 13(c). If the children are not legally required to attend school when performing this work and if it can be said to be agricultural in nature, then they would be exempt from the child labor provisions of the act. In my opinion, the mere cutting of grass and upkeep of the premises around the plant would not be considered agriculture, within the meaning of section 13(c). On the other hand, if crops are planted and harvested and these boys actually participate in such operations, I do not think the mere fact that a munitions plant is nearby would keep them from being employed in agriculture within the meaning of section 13(c). In this connection, please refer to Mr. Gardner's memorandum to you, dated May 22, 1942 (Legal Field Letter 86, p. 30). Since your memorandum does not contain a sufficiently detailed description of the operations performed to permit me to express an opinion as to whether such operations are in fact agriculture, I believe that you may be guided by the principles above stated in making a proper determination on this question.

I am assuming that the work in question is being performed "in or about" the Ordnance plant, since you state that the land to be cultivated is within the enclosure separating the plant premises from other farm lands. It may be, however, that because of the size of the surrounding grounds and the location of the plant this might not be an accurate assumption, but the facts contained in your memorandum are not sufficiently descriptive to enable us to venture an opinion on that point.

If the children are not engaged in agriculture within the meaning of section 13(c), then it is my opinion that Hazardous Occupations Order No. 1 would be applicable to those between 16 and 18 years of age if the work is being

(01376)

performed "in or about" the Ordnance plant. Work of a custodial nature in or about a plant manufacturing explosives or articles containing explosive components would be prohibited by this Hazardous Occupations Order to minors between 16 and 18 years of age and such employment would constitute "oppressive child labor." In the same circumstances, by virtue of section 3(L)(1) of the act and Child Labor Regulations No. 3 (sec. 441.2(e), if minors are under 16 years of age and are employed by persons other than their parents, such employment would in my opinion constitute "oppressive child labor" within the meaning of section 12(a).

However, if the minors are under 16 years of age and employed by their parents in an occupation other than manufacturing or mining, such employment would not constitute "oppressive child labor" in contravention of sections 3(l) and 12(a) of the act. See Mr. Gardner's memorandum of June 13, 1942, to Mr. Tyson (Legal Field Letter 86, p. 35).

Likewise, the same results would obtain in the event that agricultural operations are performed while these minors are legally required to attend school, since this would make the exemption provided by section 13(c) inapplicable.

(01376)

July 13, 1943

Deutsch, Kerrigan & Stiles
Counsellors at Law
Hibernia Bank Building
New Orleans 12, Louisiana

Gentlemen:

This will reply to your letter of June 29, 1943 in which you inquire as to the application of the child labor provisions of the Fair Labor Standards Act to the employment of minors on vessels on the navigable waters of the United States, particularly with respect to employment on hydraulic dredges, tugs, barges, scows, etc.

Section 12 (a) of the act prohibits the shipment or delivery for shipment in interstate commerce of any goods produced in an establishment situated in the United States in or about which oppressive child labor is employed. In our opinion vessels on navigable waters within the United States are establishments situated in the United States within the meaning of this provision. If any oppressive child labor is employed on such vessels therefore, the shipment or delivery for shipment in interstate commerce of goods produced on such vessels would violate the provisions of section 12(a). The term "produced" is defined in section 3(j) of the act to mean: "produced, manufactured, mined, handled, or in any other manner worked on in any State."

Oppressive child labor is defined in section 3(l) of the act to include the employment of minors under 16 years of age in any occupation. It also includes the employment of minors between 16 and 18 years of age in occupations which have been found by the Chief of the Children's Bureau to be particularly hazardous for the employment of such minors. Six hazardous occupations orders have thus far been issued none of which would appear to be applicable to the employment of minors on vessels. Section 3(l) also grants an exception from the basic 16-year minimum permitting the employment of minors between 14 and 16 years of age in occupations which the Chief of the Children's Bureau has found will not interfere with their schooling or with their health or well-being. I am enclosing for your information a copy of Child Labor Regulation No. 3 which sets forth the occupations in and conditions under which minors between 14 and 16 years of age may be employed.

If you continue to have difficulty securing age certificates, please let us know and we will attempt to arrange their issuance for you. If you are in need of any additional information, please do not hesitate to call upon me.

Sincerely yours,

Enclosure

BEATRICE McCONNELL
Director, Industrial Division

SOL:CMJ:JS:ELW

(01376)

SOL:JS:ELW

George H. Foley
Regional Attorney
Boston 8, Massachusetts

July 21, 1943

Douglas B. Maggs
Solicitor

Child Labor; New England Power Service Company

This is with reference to your memorandum to Mr. Schlezinger of July 19, 1943, with respect to the above subject.

As you know, section 12(a) prohibits the shipment or delivery for shipment in commerce of goods produced in an establishment in or about which oppressive child labor is employed. In order for a violation of this section to occur, therefore, the goods produced in the establishment in which the oppressive child labor is employed either must move directly across State lines or be delivered for movement across State lines. The fact that electricity, produced in an establishment in which under-age minors are employed, is necessary to the production of goods for commerce in another establishment does not render illegal the shipment in commerce of the goods produced in the second establishment since those goods were not produced in an establishment in or about which oppressive child labor was employed.

If the goods produced in the first establishment become an ingredient of the goods produced in the second establishment, the shipment of the latter goods in commerce would violate section 12(a) since goods is defined in section 3(i) to include "any part or ingredient thereof." The intrastate delivery to the second establishment of the ingredients produced in the first establishment would also violate section 12(a) since such delivery would be a delivery for shipment in commerce.

With reference to the particular example referred to in your memorandum, I assume that the reason for the distinction drawn between the intrastate delivery of the electricity for use in the manufacture of another product and the intrastate delivery of water gas tar for the same purpose is that the electricity does not become an ingredient of the final product while the water gas tar does. If the water gas tar is entirely consumed within the State, the situation is the same as in the electricity case and the interstate shipment of the product in the manufacture of which the water gas tar was used would not violate section 12(a).

I have made some changes in your proposed letter to Mr. Jameson in line with the above opinion. You will note that the letter has also been changed to point out specifically that minors may not be employed in or about a producing establishment unless their employment is permitted by Child Labor Regulation No. 3 even though their activities are not a part of the "productive process." The proposed letter as revised is attached.

Attachment

(01376)

MEMORANDUM

July 22, 1943

To: Miss McConnell
Director, Industrial Division
Children's Bureau

In reply refer to:
SOL:JS:ELW

From: Julius Schlezinger
Child Labor Supervising Attorney

Re: Telephone inquiry from Mr. Erbach, United Air Lines, San Francisco

This is with reference to your memorandum of July 15, 1943, attaching a memorandum from Miss Montgomery requesting information concerning the applicable minimum age for certain stated occupations performed at an airport.

Under the facts given it is very difficult to determine definitely the applicable minimum age for the occupations listed. Clearly, the answer to question No. 2 concerning work in the shops where planes are repaired is 16 years of age since the minors would be employed in a work room where goods are produced or manufactured. With respect to the first and third questions the occupations described would not in themselves require a 16-year minimum but if the filling of coffee urns or the checking of tickets and handling baggage takes place in a work room or work place where processing occurred, the 16-year minimum would, of course, apply.

With respect to the fourth question, Miss Montgomery has apparently advised Mr. Erbach that the 16-year minimum applies to the making and assembling of box lunches. No description is given of the method by which box lunches are made and assembled. If, as I assume, the making of the box lunch merely consists of placing various food items in a cardboard box, clearly no manufacturing or processing would be taking place and the 16-year minimum would apply only in the event the making of the box lunch took place in a work room or work place where manufacturing or processing was occurring. The first paragraph on page two in Miss Montgomery's memorandum indicates that she is under the impression that operations which can be considered as production require a 16-year minimum. This is, of course, not true since, although production is required for coverage, only processing or manufacturing is required for the 16-year minimum. Miss Montgomery is correct in considering the assembling of lunches in a box as production.

(01376)

Frank J. Delany
Acting Regional Attorney
Chicago 54, Illinois

August 14, 1943

SOL:JS:NEG

Irving J. Levy
Associate Solicitor

Goldstein Millinery Company
18 South Michigan Avenue
Chicago, Illinois
File No. 12-1522

This is with reference to your memorandum of August 5, 1943, with respect to the above case.

/No manufacturing is performed by the subject company. The hats purchased in wholesale lots, are received in the workroom, unpacked, checked and sorted for redistribution to various department stores throughout the country, in which the subject company has retail concessions. The girls are engaged in checking, sorting, nesting and boxing the hats. The boys are usually employed in the shipping department. A few minors also work in the office./

The position of the Children's Bureau with respect to activities performed by wholesale establishments and warehouses is set forth in the opinion of April 23, 1942, from Mr. Gardner to Miss McConnell, which states:

"It is our opinion, however, that goods are 'produced' within the meaning of section 12(a) where coffee is ground, where tobacco is dried. Although 'labeling' and 'repacking' are more doubtful, we are of the view that such operations also are probably sufficient to constitute 'production'. In such situations section 12(a) applies if the wholesaler ships or delivers for shipment across a state line the goods thus processed."

You will note from this quotation that although the question is not free from doubt, we have taken the position that repacking and similar activities constitute production within the meaning of the child labor provisions of the act. Although a change in the nature of the goods is necessary to constitute "processing" as that term is used in Child Labor Regulations No. 3, no such change need take place in order for "production" to incur. This opinion means, in effect, that wholesale establishments which do something more than handle goods in the original package are subject to the child labor provisions of the act if they ship goods outside the State.

Turning now to the specific operations performed by the subject company it is our position that they constitute "production" as that term is used in section 12(a). ***

(01376)

In reply refer to:
SOL:JS:ELW

August 16, 1943

MEMORANDUM

To: Mrs. Guinivan

From: Julius Schlezinger

Re: Imperial Brands Company
537 S. Dearborn Street
Chicago, Illinois

This is with reference to your memorandum of July 26, 1943, with respect to the above case.

Although we normally hold that the parental exemption cannot be applicable in a case where a partnership is the employer, I believe that the employment in the present case must fall within an exception to that rule. One of the chief reasons for holding that a partnership cannot be a parent is that the employee is responsible to a person other than a parent as well as to his own parent. Where both partners are parents of the child in question, however, this reasoning falls down since the child is responsible only to his own parents. I am of the opinion, therefore, that where a partnership consists solely of a father and mother, the employment of their child by the partnership comes within the parental exemption granted by section 3(l).

If any member of the family other than the father or mother is a partner, I believe we should still hold parental exemption does not apply.

(01376)

SOL:JS:ELW

August 18, 1943

Charles A. Reynard
Regional Attorney
Cleveland 13, Ohio

Irving J. Levy
Associate Solicitor

Employment of minors between 14 and 16 years of age in cafeteria work.

The Children's Bureau has called to our attention a recent circular of the Cleveland Chamber of Commerce dated June 14, 1943, which is entitled "Special Bulletin No. C-43 to Manufacturers." This circular states that minors between 14 and 16 years of age may be employed in cafeteria work, except on power-driven equipment.

The statement as contained in the circular is somewhat misleading. As you know, Child Labor Regulation No. 3 excludes from the exemption granted by the regulation the employment of minors between 14 and 16 years of age in work rooms or work places where processing takes place. There would seem to be very little doubt that many of the operations such as cooking, baking, etc., performed in the kitchens of restaurants and cafeterias are processing operations. Therefore the employment of minors between 14 and 16 years of age in cafeteria kitchens constitutes oppressive child labor. If the cafeteria is located in a factory or other establishment producing goods which are shipped in interstate commerce, such employment would cause the shipments to be in violation of section 12(a).

Since the circular states that the information contained therein is in accordance with "interpretations of the Department of Labor," we suggest that you get in touch with the appropriate official of the Chamber of Commerce and advise him of our interpretation in this matter. The circular is signed by Spencer D. Corlett, Manager of the Legislative Department.

(01376)

In reply refer to:
SOL:JS:EIW

September 3, 1943

MEMORANDUM

To: Miss McConnell
Director Industrial Division
Children's Bureau

From: Irving J. Levy
Associate Solicitor

Subject: Applicable minimum age for occupations covered by duration exemptions from hazardous occupations orders.

Mr. Schlezinger has advised me of your request for an opinion as to the applicable minimum age for occupations covered by duration exemptions from hazardous occupations orders.

As you know, the act establishes a basic minimum age of 16 years and a minimum age of 18 years for employment of minors in occupations declared particularly hazardous by the Chief of the Children's Bureau. The act also provides for the employment of minors between 14 and 16 years of age in occupations and under conditions which the Chief of the Children's Bureau has found will not interfere with their schooling, health, or well-being. The occupations in and conditions under which minors between 14 and 16 years of age may be employed are set forth in Child Labor Regulation No. 3. Section 441.2(e) of Child Labor Regulation No. 3 specifically excludes from the exemption granted by the regulation the employment of minors between 14 and 16 years of age in occupations which the Chief of the Children's Bureau has found to be hazardous for the employment of minors between 16 and 18 years of age.

The Chief of the Children's Bureau has thus far issued six hazardous occupations orders in which she has found certain specified occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age. By amendments subsequently issued, the Chief of the Children's Bureau has declared certain of these orders to be inapplicable to specified occupations for the duration of the war. The basis upon which these duration exemptions were issued was the critical shortage of labor existing in the industries affected and the fact that the occupations in question were not as "highly hazardous" as other occupations covered by such orders. The Chief, therefore, has specifically avoided finding that the occupations covered by the duration exemptions are not hazardous and, in fact, her restriction of the exemptions to the war period amounts to a finding that such occupations are still hazardous. Accordingly, since the Chief of the Children's Bureau has not modified her finding that the occupations in question are hazardous for the employment of minors between 16 and 18 years of age, the provisions

(01376)

of section 441.2(e) of Child Labor Regulation No. 3 are still applicable and the basic statutory minimum age of 16 years is now in effect.

Furthermore, even aside from the provisions of section 441.2(e) of Child Labor Regulation No. 3, it appears that the 16-year minimum would apply in most instances. Section 441.2(a) of Child Labor Regulation No. 3 specifically excludes from the scope of the regulation manufacturing, mining, and processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed. It appears that most occupations covered by duration exemptions from hazardous occupations orders are either processing occupations or involve employment in work rooms or work places where processing takes place.

It is my opinion that a minimum age of 16 years is applicable to occupations for which duration exemptions from hazardous occupations orders have been issued by the Chief of the Children's Bureau.

(01376)

SOL:JS:MPJ

September 7, 1943

Miss McConnell
Director, Industrial Division
Children's Bureau

Irving J. Levy
Associate Solicitor

Interpretation of the phrase "when school is in session" as applied to vocational education programs

Under a program operated in the high schools of Toledo and Cincinnati, children taking the vocational education course attend class and work during alternate weekly or biweekly periods. You have requested my opinion whether the employment of such students during the weeks when they are not required to attend class occurs during a period "when school is in session" within the meaning of section 441.3 of Child Labor Regulation No. 3. Unlike the term "while not legally required to attend school" used in section 13(c) of the act, the phrase "when school is in session" refers to the school generally and not to the individual student's requirements for attendance (see Legal Field Letter No. 86, p. 73). Since the schools attended by the minors in question have classes in session during the weeks when such minors are employed, it might be argued that such employment takes place when "school is in session." It is also true, however, that the same school often has classes in attendance at night, on Saturdays, Sundays and holidays and during the summer months so that if a construction of the regulation were adopted that was based solely on the fact that some classes in the school were "in session," it might, in some cases, be difficult to maintain that the school was not "in session" during weekends and summer vacation periods. Further, it is obvious that the regulation was not intended to prevent children from working more than three hours a day on weekends and more than 18 hours a week during vacation periods. Accordingly, it is my opinion that the phrase "when school is in session" refers to the class attended by the student.

The students taking the vocational education course are divided into two groups, some students attending school during each week of the school year. During the weeks when they are required to work, however, the students are not permitted to attend school. Actually, therefore, the course is divided into two classes and the class attended by the vocational education students is not "in session" during the alternate periods when they are required to work. Although the question is not free from doubt, it is my opinion that the employment of the minors in question during the weeks when they are not required to attend class does not occur during a period when school is "in session" within the meaning of Child Labor Regulation No. 3.

The foregoing opinion is not intended to indicate that the Chief of the Children's Bureau is without authority to curtail the number of hours during which such minors may be employed in weeks when they are not required to attend school. Since the Chief is authorized to permit the employment of minors between 14 and 16 years of age only under conditions which will not interfere with their schooling, health or well-being, she has the power to limit the number of hours such minors may be employed if she finds such a limitation necessary to protect their schooling, health or well-being. Such limitations are to be prescribed by regulations and accordingly any change should be made by amending Child Labor Regulation No. 3.

(01376)

Miss Dorothy M. Williams
Regional Attorney
San Francisco, California

SOL:JGT:RPV

Charles R. Reynolds, Jr.
Assistant Solicitor

September 15, 1943

Interpretation of Hazardous Occupations
Order No. 4 as Amended, Sec. 422.4(f)
"the lifting and placing of ties on rails"

This is in reply to your memorandum of August 27, 1943, requesting an interpretation of section 422.4(f) of Hazardous Occupations Order No. 4 as amended, with particular reference to the meaning of the phrase "the lifting and placing of ties and rails" as used in the proviso of that section.

You state that a member of the staff of the San Francisco Children's Bureau asks whether the use of the phrase in question does not "almost negate the provision that minors under 18 may be employed on the construction, repair or maintenance of roads, railroads, flumes or camps" because of the understanding of the staff member who raised the question "that in the railroad industry the phrase 'the lifting or placing of ties or rails' is an accepted phrase covering the leveling of the track bed, digging underneath rails, etc., and would include almost all work on the construction of railroads."

The "roads, railroads, flumes and camps" contemplated by Order No. 4 and the amendment contained in section (f) are, of course, only those used in connection with logging. Pursuant to authority conferred by the Fair Labor Standards Act the Chief of the Children's Bureau found, and by Order declared, that, with exceptions which are irrelevant in this connection, all occupations in logging and in the operation of sawmills are particularly hazardous for the employment of minors between 16 and 18 years of age; and the order expressly designated as hazardous all work in the construction of roads or railroads. The section (f) amendment directed that the order should not apply, during the war and for six months thereafter, to the construction, repair or maintenance of (logging) roads, railroads, flumes or camps, but provided that the original order should remain in force and effect as to "the lifting and placing of ties or rails."

The report of the investigation which was made by the Bureau in connection with the amendment makes it clear that the phrase in question as used in the order has no such broad meaning as was indicated by the staff members of the San Francisco office. The words are used in their ordinary meaning and are limited to the operations which they describe. The section (f) amendment also prohibits other operations which are also usual in construction work on railroads, viz., the felling of trees, the operation of machinery, the handling or use of explosives, and work on trestles. All these activities were expressly reported as being too hazardous for children under 18 years of age, even in wartime. The amendment permits such children to work on the construction of logging railroads only insofar as their work does not involve those operations and activities which are expressly excepted from the permission.

(01376)

Dorothy Williams
Regional Attorney
San Francisco, Calif.

SOL:HK:MBS

Charles R. Reynolds
Assistant Solicitor

September 18, 1943

Application of Child Labor Regulation
No. 3 to the stacking of lumber

Reference is made to your memorandum of August 27, 1943, in which you state that the local representatives of the Children's Bureau have requested your opinion with respect to the application of Child Labor Regulation No. 3 to the stacking of lumber for drying purposes and have submitted the following questions:

> "May 14 and 15 year old minors be employed under Regulation No. 3 to stack lumber in the yard of a remanufacturing establishment? A box factory was the particular establishment in the mind of the staff member who asked this question.
>
> "Would there be a difference if the lumber was stacked for drying or if it was stacked solely for temporary storing prior to being used? Lumber is often stacked identically the same way for drying as for mere 'storing.' Could the interpretation of sun drying as processing as used in connection with flax be taken to apply to lumber? How can it be decided when the drying process is complete?
>
> "Further, may a minor fourteen or fifteen be employed in a remanufacturing establishment to remove lumber from a box car to a loading platform providing no machinery is used? Would there be a difference between the unloading of green and dry lumber?"

You express the view that the drying of lumber is comparable to the sun drying of flax, which has been held to be a processing operation and that Child Labor Regulation No. 3 is inapplicable to such operations. You request our advice concerning this question.

The opinion on the drying of flax which you refer to was contained in a memorandum from the Solicitor to Miss McConnell, dated March 3, 1943, and dealt with the sun drying of flax in the field between the retting and deseeding or scutching operation. We expressed the view that drying of the flax under the circumstances mentioned is an integral part of the entire process of producing combed flax fibre and that the mere fact that sunrays are used for drying does not mean that the processing has been suspended during the drying operation. The following statement was further made:

> "****If the drying fields are a separate establishment, then the question arises as to whether drying by sunrays of itself when nothing is done by man or by machinery is a 'process' within the meaning of Regulation No. 3. On this point I prefer not to take a definite position until I have had an opportunity to discuss with you and the Chief of the Children's Bureau just what was intended to be covered by the term 'processing'; that is whether it was intended to cover only processing by man, or by man with the aid of

(01376)

machinery, as distinguished from processing by nature. I might say, however, that I would be inclined to the view that drying by sunrays alone would be 'processing.'"

In our opinion if lumber is stacked for the deliberate purpose of sun drying so as to prepare the lumber for further manufacturing or further processing, minors so employed to do this stacking would be employed in a manufacturing or processing occupation within the meaning of Child Labor Regulation No. 3, and such employment of minors 14 and 15 years of age would thus be prohibited. It would seem that the sun drying of the lumber is as much a part of the manufacturing or processing operations in connection with the manufacture of boxes as the steps which follow leading to the ultimate production of the boxes. On the other hand, if the minors are employed merely to stack lumber for the purposes of storing same prior to the time when it is to be used, they would not in our opinion be engaged in a manufacturing or processing occupation. In such a case the minors do not perform any duties in connection with changing the nature, form, or condition of the lumber as part of the manufacturing operations. Care should be taken to distinguish storing of lumber from the assembling of raw materials for manufacture which in point of time and place is considered so much an integral part of the manufacturing operation as to itself constitute a manufacturing occupation. See Legal Field Letter 86, pp. 71-72.

It is our view that a minor 14 or 15 may be employed in a manufacturing establishment to remove lumber (either dry or green) from a box car to a loading platform where no machinery is used, if such employment otherwise meets the terms and conditions of Regulation No. 3, including of course the provision that his occupation does not require the performance of any duties in workrooms or work places where goods are manufactured or processed. In this connection see Legal Field Letter 86, pp. 58 and 59, in which the statement is made that ordinarily occupations in shipping, receiving or stock rooms are not manufacturing or processing occupations. In the case submitted the minor's employment on a loading platform is tantamount to his being employed in a receiving or shipping room.

(01376)

In reply refer to:

SOL:JS:ELW

September 24, 1943

Richard R. Wolfrom, Esquire
First National Bank Building
Shippensburg, Pennsylvania

My dear Mr. Wolfrom:

Your letter of September 15, 1943, has been referred to me for reply.

Section 12(a) of the Fair Labor Standards Act of 1938 prohibits the shipment or delivery for shipment in interstate commerce of any goods produced in an establishment in or about which oppressive child labor is employed. Oppressive child labor is defined in section 3(l) of the act to include the employment of minors under 16 years of age in any occupation. An exception is granted for the employment of minors between 14 and 16 years of age, however, to the extent that the Chief of the Children's Bureau finds that such employment will not interfere with the schooling, health, or well-being of such minors. I am enclosing for your information a copy of Child Labor Regulation No. 3 which sets forth the conditions under which minors between 14 and 16 years of age may be employed. You will note that section 441.3(f) and (g) of this regulation refers specifically to the distribution of newspapers.

Your letter states that the carrier boys distribute papers over routes arranged by the publisher, paying the publisher three cents apiece for the paper and collecting five cents apiece from the subscribers on the newspaper routes. In our opinion, newsboys delivering papers for newspaper routes arranged by the publisher are employed by the publisher within the meaning of the Fair Labor Standards Act. In this connection I call your attention to section 3(g) of the act which defines the term "employ" to include "to suffer or permit to work." I am enclosing for your information a copy of the Fair Labor Standards Act.

I trust the above information will enable you to determine the requirements of the publisher in question under the child labor provisions of the Fair Labor Standards Act.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

Enclosures (2)

(01376)

Miss Beatrice McConnell
Chief, Industrial Division
Children's Bureau

SOL:HK:MBS

Douglas B. Maggs
Solicitor

September 30, 1943

Whether freezing of fresh shrimps is
a manufacturing operation under section 3(1)

Reference is made to your memorandum of September 21, 1943, in which you inquire whether or not the freezing of fresh shrimp for shipment and sale as a frozen product is a manufacturing operation within the meaning of section 3(1) of the act. You state that this problem arises in connection with a pending petition for modification of Child Labor Regulation No. 3 so as to permit the employment of 14 and 15 year old minors in operations connected with the freezing of shrimp, subject to the terms and conditions set forth in the Regulations.

As stated in our memorandum to you of April 22, 1942, concerning the logging industry, it was pointed out that in general it seems to be the feeling of the courts that "manufacturing" requires the transformation of raw materials into a new and different article for use and that the mere application of labor to an article either by hand or by mechanism does not make the article necessarily a manufactured article. On the other hand, we have indicated that the term "processing" as distinguished from "manufacturing" denotes merely a change in the nature or form of an article.

The freezing of fresh shrimp would not, in my opinion, involve the transformation of the raw shrimp into a new and different article for use but rather would merely result in the transformation of the raw shrimp from an unfrozen state to a frozen one so as to preserve rather than to change the original state of the raw shrimp, thereby rendering same fit for later consumption in its raw state. Such operations in my opinion are "processing" in nature rather than "manufacturing."

Accordingly, it is my view that the Chief of the Children's Bureau has the authority to include within the permissible employments under Child Labor Regulations No. 3 occupations in connection with the freezing of fresh shrimp. This conclusion, however, is limited to an assumption of facts based upon the premise that the raw shrimp is subjected to a freezing process and that no prior or subsequent processing or manufacturing operations take place in connection therewith which might result in the freezing operations being merely an integral part of an ultimate manufacturing operation.

(01376)

SOL:JS:ELW

October 13, 1943

L. E. Trinus, Jr., Esquire
Great Northern Railway Company
Law Department
St. Paul 1, Minnesota

Dear Mr. Trinus:

Your letter of September 28, 1943, requesting information concerning the applicability of the child labor provisions of the Fair Labor Standards Act to certain occupations performed in dining cars has been referred to me for reply.

Section 12(a) of the Fair Labor Standards Act of 1938 prohibits the shipment or delivery for shipment in interstate commerce of goods produced in an establishment in or about which oppressive child labor is employed. In our opinion, the preparation of food in a dining car constitutes the production of goods within the meaning of the act. These goods would not appear to be shipped or delivered for shipment in commerce, however, except during the infrequent periods when the train crosses a State line before the food that has been prepared in the diner is consumed. Under these circumstances, we do not now consider for enforcement purposes the employment of minors in a dining car subject to the child labor provisions of the Fair Labor Standards Act.

Sincerely yours,

BEATRICE McCONNELL
Director, Industrial Division

(01376)

Miss Beatrice McConnell
Director of Industrial Division
Children's Bureau

SOL:AGW:ET

Douglas B. Maggs
Solicitor

October 19, 1943

Application of the "Parental Exemption"
to Employment in a Sawmill

Your memorandum of August 18 asks "whether occupations in the sawmill where logs are converted into boards can be considered manufacturing occupations" for the purpose of the parental exemption of section 3(1) of the act. You point out that on April 22, 1942, this office advised you that "logging operations, at least insofar as they are preparatory to the cutting of logs in the sawmill, are not embraced within the meaning of the term 'manufacturing.'"

It would seem that the felling of trees should be considered merely as an appropriation of an object produced by nature for the later manufacturing, while the conversion of felled trees into boards should be treated as a manufacturing operation, at least insofar as saw mill operations are concerned. 1/ In this connection it may be well to observe that the parental exemption is applicable only if the minor is engaged "in an occupation other than manufacturing or mining" and that this language should not be construed to mean "in an occupation other than the final production of a manufactured article." In some instances minors may be "engaged in a manufacturing occupation" although the product sold by the employer may not be a "fully manufactured article" for the purpose of certain other laws. A person engaged in any part or stage of the manufacturing process is engaged in "manufacturing."

In Tide Water Oil Co. v. United States, 171 U. S. 210, 18 Sup. Ct. 837, 839, the Court said:

> "The primary meaning of the word 'manufacture' is something made by hand, as distinguished from a natural growth; but as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose from the original materials; and usually it is given a different name. Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product. Thus, logs are first manufactured into boards, planks, joists, scantlings, etc., and then by entirely different

1/ In reconsidering this problem it appears that the previous memorandum to you from this office took a somewhat restricted view of what constitutes manufacturing. While it seems clear that the sawmill operations are manufacturing operations and while it is clear that the felling of trees is not manufacturing, there is some doubt whether the first manufacturing operation occurs prior to the sawmill operations. As it seems unwise to render opinions on such close questions in the abstract, I suggest that particular cases in this intermediate field be considered in the future as they arise.

> processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name." [Emphasis supplied.]

This statement has been quoted with approval by the court in at least four subsequent opinions and as recently as 1919 (Forged Steel Wheel Co. v. Lewellyn, 251 U.S. 511, 64 L.Ed. 380). In Wind River Lumber Co. v. Frankfort Marine, Accident & Plate Glass Ins. Co., 196 Fed. 340, the Ninth Circuit Court of Appeals held that a sawmill was a factory within the meaning of an Oregon statute regulating employment of minors in any "factory, store, workshop or mine." In State v. Filberts Sons Lumber Co., sawmill operations were held to constitute manufacturing for the purpose of a Louisiana tax statute. (To the same effect see State v. American Creosote Works, 112 So. 412.) In Kentucky the operator of a portable sawmill has been held to be a manufacturer (Bogart v. Tylers, Administrator, 55 S. W. 709). The same result was reached by the Arkansas court in Bemis v. First Natl. Bank, 40 S.W. 127. Likewise, in Mitchell v. Page, 107 Me. 388, 78 Atl. 570, the court held, in a case involving a mechanic's lien, that the place of destination of logs for manufacture was the yard of a portable sawmill. The courts of two other States have indicated their belief that sawmill operations are manufacturing by defining "saw logs" as logs suitable for being manufactured into lumber (Ladnier v. Ingram Day Lumber Co., 135 Miss. 632, 100 So. 369, and Horton & Co. v. Sparlsman, 2 Wash. 165, 25 Pac. 1070, 1071) In State v. Downs, 197 So. 379, the Alabama Court of Appeals held that a person engaged in the business of buying standing timber and selling dressed lumber was a manufacturer of, rather than a dealer in, lumber for the purpose of a State license tax, 2/ while in Missouri a portable sawmill seems to be regarded as a manufacturing plant for the purposes of a safety of operation statute. Sanders v. Quercus Lumber Co. (1918) 198 Mo. App. 423, 199 S.W. 1045. In 38 Corpus Juris 989 the editor states that "a sawmill is usually considered as a manufacturing establishment, manufactory, or factory."

As noted in the memorandum of April 22, 1942, from this office to you there is dictum to the contrary in Inghram v. Cowles, 23 N.E. 48, which may represent the present law in Maine. It would seem however, that while the cases cited above do not exhaust the field they let little doubt exist as to the correctness of the conclusion that sawmill operations constitute manufacturing and a minor engaged in such operations is employed in a manufacturing occupation.

2/ See also Yellow Pine Co. v. State Assessors (1904) 70 N.J.L. 590, 57 Atl. 393, affirmed 72 N.J.L. 182, 61 Atl. 436, where in construing a state law exempting manufacturing companies from payment of a license tax, it was assumed that a mill engaged in cutting and dressing rough lumber was engaged in manufacturing. A similar situation occurred in Williams v. Park, 56 Atl. 463, 69 L.R.A. 33 (N.H.)

Miss Dorothy M. Williams
Regional Attorney
San Francisco 3, California

SOL:HK:LGR

Douglas B. Maggs
Solicitor

November 6, 1943.

Application of Section 12(a) and
Child Labor Regulation No. 3 to the
X-ray of Aircraft Castings

Reference is made to your memorandum of September 23, 1943, concerning the subject matter. You state that the X-Ray Products Corporation of Los Angeles, California, is engaged in the X-ray of aircraft castings that are sent to it from out-of-State airplane manufacturers. Airplane manufacturing companies located in several States send aircraft castings to the subject company which takes and develops X-ray pictures of these castings, inspects and interprets the X-ray pictures and returns the X-ray castings to the plants which sent them. The inspection report contains no information with respect to whether or not the X-ray pictures are sent across State lines. You inquire whether the above-described operations of the X-Ray Products Corporation bring it within the scope of section 12(a) of the Fair Labor Standards Act and, if so, whether the taking and developing of X-ray pictures is a "processing occupation" within the meaning of section 441.2(a) of Child Labor Regulations No. 3.

It is my view that the company in question, insofar as the X-ray work described is concerned, is engaged in the production of goods within the meaning of section 12(a) of the act. As stated in the recent case of Lenroot v. Western Union Telegraph Co. (S.D.N.Y. Oct. 7, 1943), Lit. Man. Memo. 653, clearly the castings are "handled" and "worked on" within the meaning of the definition of the word "produced" in section 3(j) of the act. Furthermore, the X-raying of the castings would seem to be an integral part of their production. Since the subject company is in my opinion engaged in "production" insofar as the castings are concerned the fact that the X-ray films are not sent across State lines would not seem significant, inasmuch as the castings are shipped across State lines. Accordingly, the company is engaged in producing goods which are shipped across State lines within the meaning of section 12(a).

I assume that the X-ray process of the company involves the use of a plate which is placed next to the article X-rayed and the rays are registered upon the plate which is used to develop the pictures, or that the process in some other manner involves the performance upon an object (such as a plate) of some act which changes its nature or form.

Based upon this assumption, it is my opinion that the taking and developing of X-ray pictures considered alone would be a "processing occupation" within the meaning of section 441.2(a). These operations involve a series of acts performed upon the subject matter transforming and reducing the same to a different state of thing within the meaning of the definition of the term "processing" set forth in Legal Field Letter 86, page 58. The mere taking of X-ray pictures would be a part of the processing operation. Therefore, if either the films or the castings are shipped out of the State within the thirty-day period the employment of minors in workrooms or work places where the X-ray films are either taken or developed would be prohibited by Regulations No. 3. The Regulations under such circumstances would also prohibit the employment of minors in any occupations which required the minor to enter workrooms or work places where such processing operations take place.

(01376)

It should be noted that in the event the X-ray films are transmitted across State lines that the process of taking and developing the films in and of itself would constitute the production of goods within the scope of section 12(a) of the act which would make it unnecessary to base coverage exclusively on the basis of handling or working on the castings.

(01376)

MEMORANDUM

To: Mrs. Elizabeth B. Coleman
Assistant Director of Administration
Children's Bureau

In reply refer to:
SOL:WWS:ELW

From: Julius Schlezinger
Child Labor Supervising Attorney

November 23, 1943

Subject: The employment of minors while assisting in the separation of seeds from tomato pulp at the Francis C. Stokes Company, Vincentown, New Jersey.

This refers to your memorandum of November 4, 1943, in which you inquire as to the applicability of the agricultural exemption (section 13(c)) to minors employed by the above named employer in and about its "proving ground" in the cleaning and drying of tomato seeds.

You advise:

> "* * * the part known as the 'proving ground' is situated about 50 yards from the canning building. Tomatoes grown by farmers are brought to the cannery where the seeds are separated from the juice and pulp, the latter going into the regular canning process. The seeds are put in barrels and allowed to ferment for 24 hours, after which they are washed and then moved to the 'proving ground' where they are placed on screens out of doors in the sun. The duties of these children, as well as that of older persons were to rub off the dried pulp of the tomato, and when dried to place them in packages. These seeds are either sold to seed houses for sale to the public, or are used by the cannery itself for growing tomato plants which are sold to the farmers who have contracted to raise certain brands of tomatoes for the cannery.
>
> * * *
>
> "School was not in session when the children were working in the 'proving ground' * * *."

It is my opinion that minors employed under the stated circumstances are not "employed in agriculture."

1. The operations performed by these minors do not fall within the term "agriculture" as defined in section 3(f) of the act.

You will note that the minors are not employed on a farm nor are they engaged in cultivation or tillage of the soil, or the cultivation, growing or harvesting of any agricultural or horticultural commodity.

The question presented is identical in principle to that involved in the applicability of section 13(a)(6) which provides an exemption from the wage and hour provisions of the statute in the case of "any employee employed in agriculture."

(01376)

In Walling v. Peacock Corp., 6 Wage Hour Rept. 1068 (E.D. Wis. 1943), the defendant claimed that employees engaged in similar operations (cleaning, storing and milling onion sets produced by others which were later sold to farmers for planting) were within the scope of the section 13(a)(6) exemption. The court in denying the exemption said as follows:

> "The defendant's plant is in no sense a farm. The defendant is not a grower. Most of the employees are doing work not requiring any skill or experience in farming. I conclude that the exemption aforementioned [13(a)(6)] does not cover defendant's activities."

2. Even if we assume that the operations performed would constitute employment in "agriculture" when performed on agricultural or horticultural commodities, it is questionable as to whether the products on which these operations are performed in the instant case constitute agricultural or horticultural commodities within the meaning of the act. We have adopted the position that where the natural form of an agricultural commodity has been changed, it ceases to be an agricultural commodity. See paragraph 32 of Interpretative Bulletin No. 14.

The file is returned to you herewith.

Attachment
(File)

(01376)

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

SOL:JMS:DMH

William S. Tyson
Assistant Solicitor

November 27, 1943

Wovencraft Company
Employment of Minors in Inspection Room

Reference is had to your memorandum dated November 20, 1943, in which is presented an inquiry from one of your Associate Child Labor Consultants regarding the employment under Child Labor Regulation No. 3 of a 15-year old boy in an inspection room.

It appears that the subject company is a woven label manufacturer shipping goods in interstate commerce; that the cutting of tape when a strip contains more than one size is performed in the room where the goods are inspected and the imperfect pieces sorted out; that the subject company has indicated its willingness to have the tape cut elsewhere so that nothing is done in the inspection room except inspection and sorting; and that the question is now raised whether the employment of a 15-year old minor in such a room is permissible under Child Labor Regulation No. 3.

Concerning the main question presented, I am of the opinion that the employment of the minor herein is not permissible under Child Labor Regulation No. 3 as he would be employed "in a workroom or work place where goods are being manufactured or otherwise processed." Clearly, the inspection of goods and the sorting out of imperfect pieces is a part of the productive process. The manufacture of the goods does not stop until the moment when the goods are completely finished and in a condition to be readied for distribution to intended customers. Certainly that moment is at some time after the goods are inspected, for prior to that time, they are still going through the manufacturing process inasmuch as they are not yet in a condition to be distributed. At what precise moment the manufacturing process ceases and distribution begins, we need not here consider.

In a letter dated February 18, 1943, to Mr. George A. Picard, Supervisor of Attendance, Whittier School, Haverhill, Massachusetts, you state:

> "Not all non-machine operations can be considered as non-manufacturing occupations. It is my opinion that any occupation involved in the manufacture of a product from the assembling of the raw materials for manufacture to the completion of the manufactured article is a part of the manufacturing process and therefore a manufacturing occupation. If the separating of the leather pieces from the paper before cutting and the sorting of the pieces of leather scrap to salvage the larger pieces for future use are a part of the manufacture of the finished product they would in my opinion be manufacturing occupations."

I concur in that opinion and feel that it is equally applicable to the instant case.

(01376)

Further inquiry is inferentially made as to whether "production" is synonymous with "processing." In this connection, it is my view that the terms are neither synonymous nor coextensive. Production may involve "processing" which is generally defined as any treatment of an object in such a way as to change its form or substance in order to make it usable or marketable. However, the term "production" is, in my opinion, broader than the term "processing" for, as defined in section 3(j) of the act, production may include many non-processing occupations. Clearly, a person employed in a clerical or custodial capacity is engaged in production but not in a processing occupation. On the other hand, where processing operations occur, and, consequently, production, then, "section 12(a) applies if the dealer ships goods 'thus processed.'"

(01376)

Mrs. Elizabeth B. Coleman

Douglas B. Maggs
Solicitor

SOL:JMS:DMH

November 29, 1943

Opinion re Minimum Age Applicable to Painting Outside of Woolen Mill Which Produces Blankets for Interstate Commerce
Brownsville Woolen Mills, Brownsville, Oregon

Your memorandum of September 15, 1943, presents the question of whether the occupation of painting the outside of a mill which produces goods for interstate commerce would be permissible under Regulation No. 3 for a 14 or 15-year old minor, provided his duties did not require him to go into the mill where the goods were being manufactured.

It is our opinion that the minor in question engaged by the subject company to paint the outside of its mill is employed in or about the mill within the meaning of section 12(a). Since the mill in this case is producing goods and shipping them in commerce the prohibitions of section 12(a) seem applicable except to the extent that Child Labor Regulation No. 3 may apply.

On the basis of the facts presented, no Hazardous Occupation Order appears applicable.

The employment of minors between the ages of 14 and 16 is not deemed to be oppressive child labor under the conditions specified in Child Labor Regulation No. 3, which provides in part as follows:

> "Sec. 441.2 Occupations.--This regulation shall apply to all occupations other than the following:
>
> (a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed."

If the duties of the minor involved do not bring him within any of the occupations set forth in section 441.2 of Regulations No. 3, his employment under the terms and conditions set forth in the regulation is permissible.

The term "manufacturer" has been defined as follows: (Bouvier Law Dictionary, 1914 ed.)

> "Manufacture--To make or fabricate raw materials by hand, art of machinery, and work into forms convenient for use; and when used as a noun, anything made from raw materials by hand, or by machinery or by art." (Citing People v. Temple, 61 Hun. 53, 15 N.Y. Supp. 711.)

In the case of Kreshower v. United States, 152 Fed. 485 (Circuit Court S.D.N.Y., 1907), the court speaks of the term "manufacturing" as follows:

> "The treatment did not result in a change of the leaves from their former appearance. There was no advance in manufacture in the sense that the process of preservation destroyed the original articles or made them useful for other purposes or altered their trade designation."

(01376)

The term "processing" has been defined as follows:

"A process is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts performed upon the subject-matter to be transformed and reduced to a different state or thing." (Johnson v. Foos Mfg. Co., 141 Fed. 73, 85, quoting and adopting definition in Cochrane v. Dooner, 94 U.S. 780.)

"2. To subject to some special process or treatment. Specif.: a. To heat, as fruit, with steam under pressure, so as to cook or sterilize. b. To subject (esp. raw material) to a process of manufacture, development, preparation for the market, etc.; to convert into marketable form, as livestock by slaughtering, grain by milling, * * *." (Webster's New International Dictionary, Unabridged (2d) ed. 1939))

It is my opinion that the occupation herein involved is within the occupations set forth in section 441.2 of Regulation No.3. While it does not appear that the minor's duties are such as to be properly classifiable as a manufacturing occupation, nevertheless, under the aforementioned definition of "processing" the minor is performing an act upon subject matter which is transformed and reduced thereby to a different state.

It is, therefore, my view that a minor between the ages of 14 and 16 may not be employed to paint the outside of a mill which is producing goods for interstate commerce under the terms and conditions contained in Regulation No. 3.

SOL:JS:ELW

November 1943

Mr. G. J. Hartl
The Sharaf Company, Inc.
16 New Street
East Boston, Massachusetts

My dear Mr. Hartl:

This refers to your letter of November 17, 1943, requesting information concerning the application of Child Labor Regulation No. 3 during periods when school is in session for part of a week.

Under section 441.3(c) of child labor regulation No. 3, minors between 14 and 16 years of age may not be employed more than 18 hours in any week when school is in session. Accordingly, if school is in session for part of a week, such minors may not be employed more than 18 hours even if a school holiday occurs during that week.

Section 441.3(c) permits employment for eight hours during any day when school is not in session. Minors between 14 and 16 years of age, therefore, may be employed for eight hours on a holiday or other non-school day even though school is in session on other days during that week. The weekly limitation of 18 hours must still be observed during such weeks, however.

I trust that the above furnishes you with the information that you desire. If you are in need of any additional information, please do not hesitate to call upon me.

Sincerely,

Beatrice McConnell
Director, Industrial Division

(01376)

George H. Foley
Regional Attorney
Boston, Massachusetts

SOL:HK:HC

William S. Tyson
Assistant Solicitor

December 11, 1943

Sprague Specialties Company
North Adams, Massachusetts
File No. 20-53143

Walter Graves, d/b/a Sprague's Cafeteria
Beaver Street
North Adams, Massachusetts
File No. 20-54636

Walter Graves, d/b/a Sprague's Cafeteria
Brown Street
North Adams, Massachusetts
File No. 20-54637

Reference is made to your memorandum of November 10, 1943 in which you inquire concerning the application of section 12(a) of the Fair Labor Standards Act to the following situation. You state that Walter Graves operates two cafeterias in the plants of the Sprague Specialties Company in North Adams, Massachusetts, and that the Sprague Specialties Company is engaged in the production of goods for interstate commerce, thereby being subject to the Fair Labor Standards Act. The operator of the cafeterias in question receives the use of space in the two manufacturing establishments free of charge, the only stipulation being that the operator keep his prices down. Sales of food produced in the cafeterias are made on a cash basis exclusively to the employees of Sprague Specialties Company. The cafeteria in the Beaver Street place is located on the ground floor of the building near the employees' entrance and can be reached without walking through any production department of the plant. Similarly, the cafeteria at the Brown Street place is located on the ground floor, in the north wing of the building, and can be reached by walking through the yard of the plant and through an entrance-way in the plant. The cafeterias in question employ many children under the age of 16 years, who work over 8 hours a day and 40 hours a week while school is in session. You inquire whether the cafeterias in which these minors are employed should be deemed a part of the "establishment" of Sprague Specialties Company within the meaning of section 12(a) of the act.

You make reference to an opinion dated May 13, 1943, from Assistant Solicitor Charles R. Reynolds to Miss Beatrice McConnell, Director of the Industrial Division, Children's Bureau, which has the following statement: "It is our view that where an entire building is occupied by a single business enterprise, it is a single 'establishment' within the meaning of section 12(a)." As you state, the issue is whether the employees of an independent restaurant concessionaire selling meals exclusively to employees of the plant in which he operates the restaurant, are working "in or about" the "establishment" of the other employer so as to make shipment of the goods by the plant a violation of section 12(a) of the act.

(01376)

It is my view that coverage under section 12(a) would appear to exist upon the basis that the minors in question employed by the cafeterias would, in any event, seem to be employed "about" the plant establishment within the meaning of the tests set forth in the said memorandum of May 13, 1943, which are as follows:

> "(1) That it is sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term 'about,' and
>
> "(2) That the occupation engaged in by the minor is directly related to the activities carried on in the producing establishment....."

As stated in said memorandum, occupations which are "necessary to the production of goods" within the meaning of section 3(j), as interpreted in the Kirschbaum decision, are sufficiently related to the activities carried on in the producing establishment to meet the second test referred to above. As you know, the Division has taken the position that employees in a restaurant located in a producing establishment, which serves meals to employees in the plant, are engaged in an occupation necessary to the production of goods for interstate commerce.

Miss Beatrice McConnell
Director, Industrial Division
Children's Bureau

SOL:JMS:MGS

William S. Tyson
Assistant Solicitor

December 21, 1943

Wovencraft Company
Employment of Minors in Inspection Room

Reference is had to your memorandum of November 20, 1943, in which you presented a question to which a reply was not made in my memorandum dated November 27, 1943.

Your memorandum stated:

> "Miss Tolman tells me that in the sardine canneries, the cans are inspected in the shipping room and cans with bulges, etc. are sorted out. We did not consider this 'processing' in setting up our Maine cases. Should we have done so? If we had, it would rule out all employment of minors under 16 in the shipping rooms."

In my memorandum of November 27 in reply to a similar question concerning the employment of a 15 year old boy in an inspection room in which woven labels were inspected and the imperfect pieces sorted out, I stated that I am of the opinion that such employment is not permissible under Child Labor Regulations No. 3 since such employment is "in a workroom or work place where goods are being manufactured or otherwise processed."

It is my opinion that the foregoing is similarly applicable to the situation in the sardine canneries, and accordingly, where inspection takes place in the shipping room, employment therein of minors under 16 is not permissible under Child Labor Regulations No. 3.

Of course, the inspection referred to in this memorandum relates strictly to inspection which is an integral part of the manufacturing process, and not to inspection which cannot be considered related to the manufacturing process. For example, the inspection of goods which have been stored for some time for the purpose of determining whether they are marketable would not, in my opinion, be a part of the manufacturing process.

(01376)