

to accept said recital as a true statement of the facts in regard to this matter.

I am, accordingly, approving the title of Julia A. Sawyer in and to the above described property as of the date of the certification of the abstract of title submitted to me and I am likewise approving the warranty deed, contract encumbrance record and other files submitted to me in connection with this matter, all of which files are herewith returned to you for proper action on your part and on the part of the officials of Kent State University in closing the transaction for the purchase of this property in line with this opinion and the suggestions herein made.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1436.

ENACTMENT OF GENERAL ASSEMBLY—AMENDED SENATE BILL NO. 287—ENROLLED BILL—ORIGINAL BILL—DISCREPANCY — DULY AUTHENTICATED AND FILED ENROLLED BILL IS THE LAW—HOURS OF LABOR FOR GIRLS WHO ARE MINORS—SECTIONS 12996 AND 1008-2, G. C., INTERPRETED.

SYLLABUS:

1. *Where there is a discrepancy between the language of an enactment as it appears on the enrolled bill duly authenticated and filed in the office of the Secretary of State and the language of the original bill as it appears on the journals of the House and Senate, the law is as it is worded in the duly authenticated and filed enrolled bill.*

2. *Inasmuch as Section 12996, General Code, as it appears in Amended Senate Bill No. 287 specifically authorizes the employment of girls between 16 and 21 in mercantile establishments for ten hours on Saturdays and on days specified in Section 1008-2, General Code, the provisions of Section 1008-2 which prohibit the employment of females under 18 years of age for more than eight hours on Saturdays and the days specified (as well as on all other days) cannot be enforced.*

COLUMBUS, OHIO, November 8, 1937.

HON. O. B. CHAPMAN, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“Section 1008-2 of Amended Senate Bill No. 287 states, ‘except that in mercantile establishments, females over *eighteen years* of age may be employed ten hours on Saturdays’ and on the days preceding holidays. Section 12996 of same laws states, ‘except that in a mercantile establishment girls between the age of 16 and 21 may be employed for ten hours on Saturdays and also on the days specified in Section 1008-2.’ The original bill gave the ages in 12996 as 18-21 years, but the enrolled bill states 16-21 years. We, therefore, request an official opinion as to which section shall be enforced.”

Your question involves two separate legal problems. First of all, it is necessary to determine whether we may look behind the enrolled bill to ascertain from the journals of the House and Senate the provisions of the original bill. Although there is a wide conflict of authority in other jurisdictions, it is the law of Ohio that the enrolled bill governs as to the wording of enactments. This rule was laid down by the Supreme Court in the case of *Ritzman vs. Campbell*, 93 O. S. 246. This case involved a set of facts identical with those set forth in your communication. There was a discrepancy between the wording of the enrolled bill which had been authenticated and filed in the Secretary of State's office and the wording of the bill as it appeared on the journals of the House and Senate. After discussing this issue at some length, the court concluded at page 263:

“Meanwhile an enrolled bill bearing the solemn attestation that it was signed by the presiding officers of each house, while the same was in session and capable of doing business, and which thereafter was presented to and signed by the governor and by him filed with the secretary of state, must, if the legislative journals show it to have received the necessary constitutional majority, be considered to be what it purports to be, and not under any circumstances subject to impeachment as to its contents or the mode of its passage.”

The second branch of the syllabus states the holding somewhat more clearly and inasmuch as it is completely dispositive of this phase of your inquiry, I quote it as follows:

“2. Such enrolled bill, so authenticated, is conclusive upon the courts as to the contents thereof, since the attestation of the presiding officers of the general assembly is a

solemn declaration of a coordinate branch of the state government that the bill as enrolled was duly enacted by the legislature.”

In view of this decision (never subsequently overruled or questioned by the Supreme Court of Ohio) I am of the opinion that although there may be a variance between the wording of Section 12996 of Amended Senate Bill No. 287 enacted by the 92nd General Assembly as it appears in the enrolled bill filed with the Secretary of State's office and the wording of the original bill as indicated by the journals of the House and Senate, the law is as it appears on the duly authenticated bill filed in the office of the Secretary of State.

Therefore it must be admitted that there is a patent inconsistency between the two portions of Amended Senate Bill No. 287 referred to in your letter. The inconsistency lies in the following parts of the enactment:

Section 1008-2:

“Except as hereinafter provided, no employer shall employ a female for more than forty-eight hours in any one week or eight hours in any one day, * * *; *except further that in mercantile establishments females over eighteen years of age may be employed ten hours on Saturdays, and for ten hours on the days preceding the thirtieth day of May, known as Decoration or Memorial Day; the fourth of July, known as Independence Day; the day designated by proclamation as Thanksgiving Day; the twenty-fifth day of December, known as Christmas, and the first day of January, known as New Year's day, * * *.*” (Italics the writer's.)

Section 12996:

“No boy under the age of eighteen years and no girl under the age of twenty-one years shall be employed, permitted or suffered to work in, about or in connection with any establishment or occupation named in Section 12993 * * *; *except that in mercantile establishments boys between the ages of 16 and 18 and girls between the ages of 16 and 21 may be employed for ten hours on Saturdays and also on the days specified in Section 1008-2 of the General Code on which females may be employed ten hours in mercantile establishments, * * *.*” (Italics the writer's.)

It is quite obvious that the italicized exemptions in the quoted provisions deal with exactly the same subject matter and it is impossible to give each an independent operation.

In your inquiry you request my opinion as to which should be enforced. Inasmuch as a violation of either of these provisions is a criminal offense (See Sections 1008-4 and 13007-9) the enforcement question should be considered with this in mind. If an employer were charged with a violation of Section 1008-2, General Code, in that he employed a sixteen-year-old girl in a mercantile establishment for ten hours on Saturday, the defense would probably contend that such employment is authorized by Section 12996, General Code. Under such circumstances the courts would probably dismiss the case on the ground that criminal statutes are to be construed most favorably for the defendant and it is safe to say that the courts would not uphold a conviction on such a charge. Therefore, I am constrained to advise you that in so far as the employment of females in a mercantile establishment for ten hours on Saturday and the specified days mentioned in Section 1008-2, General Code, is concerned, in my opinion you can only effectively enforce the provisions of Section 12996, General Code. In other words, the employment of girls between the ages of 16 and 21 in mercantile establishments for ten hours on Saturdays and the days specified in Section 1008-2, General Code, is lawful under the present state of the law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1437.

DISAPPROVAL—BONDS OF BROOKFIELD TOWNSHIP.
TRUMBULL COUNTY, OHIO, \$6,500.00.

COLUMBUS, OHIO, November 8, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Brookfield Township, Trumbull
County, Ohio, \$6,500.00.

I am in receipt of a transcript purporting to be a transcript of the proceedings taken by Brookfield Township, Trumbull County,