

1933

1. EMPLOYMENT—HOURS—FEMALES AND MINORS EMPLOYED BY COMMUNICATIONS COMPANIES—SECTIONS 1008-2, 12996 G. C. APPLICABLE TO ALL SUCH COMPANIES—INTERSTATE OR INTRASTATE COMMUNICATIONS SERVICES.
2. FEMALE EMPLOYEES OF A COMMUNICATIONS COMPANY—SICKNESS AND INADEQUATE HELP—NOT VALID CAUSES TO EXCEED WORKING HOURS.
3. LAWFUL FOR COMMUNICATIONS COMPANY TO USE MINORS AS OPERATORS—SECTION 1008-2 G. C.—SECTION 12996 G. C. DOES NOT APPLY TO TELEPHONE OPERATORS.
4. DIRECTOR OF DEPARTMENT OF INDUSTRIAL RELATIONS—NO AUTHORITY IN LAW TO GRANT PERMISSION TO EMPLOYERS TO EMPLOY FEMALES AND MINORS FOR GREATER NUMBER OF HOURS PER DAY THAN MAXIMUM FIXED BY LAW.

SYLLABUS:

1. The provisions of Sections 1008-2 and 12996, General Code, regulating the hours of employment of females and minors employed by communications companies, are applicable to all such companies whether engaged in interstate or intrastate communications services.

2. Sickness and inadequate help are not valid to exceed the working hours of female employees of a communications company.

3. It is lawful for the communications company to use minors as operators in accordance with the provisions of Section 1008-2, General Code, as Section 12996 does not apply to telephone operators.

4. The director of the department of industrial relations is without authority in law to grant permission to an employer to employ females and minors for a greater number of hours per day than the maximum fixed by law.

Columbus, Ohio, June 2, 1947

Hon. W. J. Rogers, Director, Department of Industrial Relations  
Columbus, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

“There has come to my attention a request from the Elyria Telephone Company of Ohio, pertaining to a matter involving the number of hours of employment of female operators and of minors, involving Sections 1008-2 and 12996 of the General Code of Ohio.

This company is engaged in inter and intra state communication service and due to sickness and inadequate help it is unable to maintain proper service in this community unless its request for permission to work its operators a maximum of ten hours per day and a maximum of fifty-five hours per week is granted to it. In this connection the hours of employment of females, some under the age of twenty-one and some under the age of eighteen, are involved with respect to the starting time in the morning and the stopping time at night, as set forth in Section 12996.

I therefore request that you render an opinion answering the following questions:

(a) Do Section 1008-2 and Section 12996 apply to this company engaged in inter and intra state commerce or communication service?

(b) Is it lawful for the company to work its operators a maximum of 10 hours per day and a maximum of 55 hours per week because of sickness and inadequate help to maintain proper service in the community?

(c) Is it lawful for this company to use minors as operators after 10:00 o'clock at night, or before 6:00 o'clock in the morning?

(d) What right, if any, does the Director of the Department of Industrial Relations have to grant such permission to the Company?"

Section 1008-2, General Code, regulates the hours of employment of female employees. The pertinent parts of that section are as follows:

"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, or on more than six days in any period of seven consecutive days; \* \* \* If the work during any one day is not continuous but is divided into two or more periods, the employer shall provide that all such periods fall within ten consecutive hours; \* \* \* except that for employes engaged in the operation of a communications company all such periods shall fall within thirteen consecutive hours; \* \* \*

Nothing in this section or any other provisions of this act shall apply \* \* \* to the employment of females by a communications company during periods of emergency caused by fire, flood, epidemic, or other public disaster \* \* \* or to the employment of females over twenty-one years of age in communications companies except in cities of 5,000 population and over; \* \* \*."

Under former Section 1008-2, General Code (117 O. L. 539), the words "telephone companies" were used. In amending the section above referred to, the Legislature substituted the broader term "communications company" with the apparent intent to include all concerns in the business of transmitting messages.

While the term "communication company" is not defined by the Legislature, it is a well settled principle of law that words of common usage should be given their usual, ordinary and natural meaning or signification according to their common usage when applying a statute, unless there is some indication to the contrary in the statute or in cognate statutes. See Crawford on Statutory Construction, page 317, and authorities cited.

In view of the language of the former statute as set forth in 117 O. L. 539, and the rules of construction as set forth above, I find no difficulty in arriving at the conclusion that a telephone company would fall within the term "communications company," as the same appears in Section 1008-2, General Code.

Section 12996, General Code, which regulates the employment of minors, provides, in so far as material here:

"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* (1) for more than six days in any one week, (2) nor more than forty-eight hours in any one week, (3) nor more than eight hours in any one day, (4) or before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening; \* \* \* No boy under the age of sixteen and no girl under the age of eighteen shall be employed, permitted or suffered to work in, about or in connection with any establishment or *occupation named in section 12993* before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening. \* \* \*"

Emphasis added.

Section 12993, General Code, referred to in the above section, enumerates the places of employment in which it is illegal to employ minors. Suffice to say here that it does not include telephone operators, but does include office employees. It is therefore my opinion that Section 12996, General Code, does not apply to females, including minors, employed as telephone operators and that the hours of their employment are governed by Section 1008-2, General Code.

It will be noted that Section 1008-2, General Code, in its application to female employees engaged in the operation of communications companies, makes no distinction between such companies engaged in interstate commerce and those engaged in intrastate commerce. It would therefore appear, and it is accordingly my opinion, that the prohibition contained in said section in this respect applies with equal force and effect to females employed by telephone companies engaged in interstate communication services, as well as those engaged in intrastate communication services.

In answer to paragraph (b) of your inquiry, your attention is directed to the exceptions set out in Section 1008-2, *supra*, which deal with the employment of females by communications companies. It will be observed that said exceptions extend only to the employment of females by a communications company during periods of emergency caused by fire, flood, epidemic or other public disaster, or to the employment of females over twenty-one years of age in telephone companies, except in cities of five thousand population and over.

Since the city of Elyria has a population of over five thousand, the latter exception may be dismissed from any further consideration. That then leaves the question of whether or not inadequate help, due to sickness

of a number of female employees, would constitute an emergency caused by "fire, flood, epidemic or other public disaster." Fire and flood manifestly may be disregarded.

An epidemic is defined in Webster's New International Dictionary as: "Common to, or affecting at the same time, a large number in a community; \* \* \* A rapidly spreading or widely prevalent attack of disease."

Certainly the illness of a number of female employees of a telephone company alone would not constitute an epidemic or public disaster. Furthermore, it appears obvious that the exception in the statute was intended to permit longer hours of employment only when an existing emergency required an extraordinary and more than a normal communication service.

A public disaster which is calculated to place a heavy drain on telephone or telegraph service is, in my opinion, the type of emergency referred to in the statute. It would seem to follow, therefore, that illness of employees and inadequate help resulting therefrom does not fall within the exceptions above mentioned, and you are consequently advised that paragraph (b) of your communication must be answered in the negative.

The department of industrial relations was created by Section 154-3, General Code, with other administrative departments, and it is provided in that section that the director of each department shall, subject to the provisions of the Administrative Code, exercise the powers and perform the duties vested by law in such department.

The powers and duties of the department of industrial relations are defined in Section 154-45, General Code, the pertinent part of which is as follows:

"The department of industrial relations shall have all powers and perform all duties vested by law in the industrial commission of Ohio, excepting the following:

Those powers and duties of the commission which it exercises as successor of the state liability board of awards, the state board of arbitration and the board of boiler rules, and in the investigation, ascertainment and determination of standards, devices, safeguards, and means of protection, being all powers and duties mentioned in paragraph 3 to 8, both inclusive, of Section 871-22 of the General Code, Sections 871-23, 871-26, 871-27, 871-28, 871-30, 871-33, 871-34, and 871-35, 1058-8 to 1058-12, both inclusive, 1058-16, 1063 to 1077, both inclusive, of the Gen-

eral Code, and the powers of the commission as successor of the board of boiler rules under Section 1058-18 of the General Code, which shall continue to be exercised and performed by the industrial commission of Ohio in the manner provided by law for the exercise of such powers and the performance of such duties."

It is a well settled principle of law that public officers have only such powers as are expressly delegated them by statute and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute. It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted. See 32 O. Jur., page 934, and authorities cited.

Therefore, in specific answer to your questions, you are advised that in my opinion:

(a) The provisions of Sections 1008-2 and 12996, General Code, regulating the hours of employment of females and minors employed by communications companies, are applicable to all such companies whether engaged in interstate or intrastate communications services.

(b) Sickness and inadequate help are not valid causes to exceed the working hours of female employees of a communications company.

(c) It is lawful for the communications company to use minors as operators in accordance with the provisions of Section 1008-2, General Code, as Section 12996 does not apply to telephone operators.

(d) The director of the department of industrial relations is without authority in law to grant permission to an employer to employ females and minors for a greater number of hours per day than the maximum fixed by law.

Respectfully,

HUGH S. JENKINS,  
Attorney General.