

OPINION NO. 67-127**Syllabus:**

"Age and Schooling Certificates" referred to in Section 4109.01, Revised Code, can be issued under Chapter 3331., Revised Code, as legitimate cause therefore arises. Their implementation and use must be governed by any other applicable code section, including Sections 4109.01, 4109.10 and 4109.12, Revised Code, and the prohibitions contained therein against employment of minors under eighteen years of age in certain specified occupations.

To: Richard J. Rinebolt, Hancock County Pros. Atty., Findlay, Ohio
By: William B. Saxbe, Attorney General, December 22, 1967

Your inquiry of June 1, 1966 is, as I understand it:

Under what conditions can an "age and

schooling certificate" referred to in Section 4109.01, Ohio Revised Code, be issued under Chapter 3331, Ohio Revised Code, where the contemplated employment might involve types of work set out in paragraphs (N) and (O) of Section 4109.12, Ohio Revised Code, and also any employment which might bring into play any part of paragraph (A) of Section 4301.22, Ohio Revised Code?

Section 4109.10, Revised Code, is clearly involved by reason of reference thereto in Section 4109.01, Revised Code, and the necessary and pertinent parts of these four sections follow:

The first paragraph of Section 4109.01, supra, reads as follows:

"Except as provided in section 4109.11 of the Revised Code, no minor of compulsory school age shall be employed by any person, firm, or corporation in any of the occupations mentioned in section 4109.10 of the Revised Code, unless such minor presents to such person, firm, or corporation, a proper age and schooling certificate, as a condition of employment. No minor of compulsory school age shall be employed by any person, firm, or corporation in any other occupation during hours when the public schools of the district in which such minor resides are in session, unless such minor presents to such person, firm, or corporation an age and schooling certificate as a condition of employment. Such employer shall keep the same on file in the establishment where such minor is employed or in the office of the business or in the residence in or about which such minor is employed for inspection by attendance officers, probation officers, the superintendent of schools, inspectors or other employees of the department of industrial relations or the department of public welfare, or representatives of the board of health of the city or general health district or department of health."

Section 4109.10, Revised Code, reads as follows:

"Unless he either is employed in irregular service as defined by section 4109.11 of the Revised Code or is the holder of an age and schooling certificate issued under section 3331.03, 3331.05, or 3331.06 of the Revised Code, no child under sixteen shall be employed or permitted to work in or about any mill,

factory, workshop, oil well or pumping station, cannery, bottling, or preserving establishment, tenement house, garment making, dress making, or millinery establishment or working rooms, store, office, office building, laboratory, restaurant, hotel, boarding house, or apartment house, bakery, barber shop, bootblack stand or establishment, public stable, garage, laundry, place of amusement, club, as a driver or chauffeur, in any coal yard or brick, lumber, or building material yard, in the construction or repair of buildings, in the transportation of merchandise; or, if a boy, in the personal delivery of messages. No female under twenty-one shall be employed in the personal delivery of messages.

"No child under sixteen shall be engaged in school and employed more than nine hours together in any one day and no child under fourteen shall be employed more than four hours in one day."

Section 4109.12, Revised Code, reads in part as follows:

"No child under eighteen shall be employed or permitted to work;

* * * * *

"(N) In any distillery, brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped, or bottled;

"(O) In any hotel, theater, concert hall, place of amusement, or any other establishment where intoxicating liquors are sold, except that a person between the ages of sixteen and eighteen years, enrolled in an accredited course in domestic science in a bona fide school, may be permitted to supplement such course of study by practical training in a co-operative training program between any hotel or restaurant and such school. Such trainee upon completion of said course of study may continue as a full-time trainee in such hotel or restaurant so long as such trainee is under the supervision of the coordinator of vocational training for the public school district in which said trainee resides. Any contract involving the service of such trainee shall be approved by such coordinator."

Section 4301.22, Revised Code, reads in part as follows:

"Sales of beer and intoxicating liquor under all classes of permits and from state liquor stores are subject to the following restrictions, in addition to those imposed by the rules, regulations, or orders of the department of liquor control:

"(A) No beer shall be sold to any person unless he is eighteen years of age; and no intoxicating liquor shall be sold to or handled by any person unless he is twenty-one years of age.

"* * * * * * * *"

The inference is strong in your letter that you, or someone closely concerned with the subject, sees some possible inconsistency or conflict in the sections making for some difficulty in their application. I see none.

Section 4301.22, supra, can be removed from our consideration. It only concerns persons over eighteen years of age. "Age and Schooling Certificates", provided for in detail in Chapter 3331., Revised Code, concerns persons under that age. It would be impossible for a situation to arise wherein an "Age and Schooling Certificate" could ever be issued to anyone who could have any chance of employment in which he might have to buy or handle intoxicating liquor.

When Section 4109.01, Revised Code, says "* * *no minor of compulsory school age shall be employed * * *" a most basic rule of statutory construction, without which many laws could not be written, requires that it be read "* * *no minor of compulsory school age shall be (legally) employed* * *".

Surely, the employment contemplated by Section 4109.-01, Revised Code, is limited by removing from any contemplation employment not legally possible.

The clear effect of Section 4109.10, supra, is that it spells out, among other things, what a minor up to age sixteen can do if he is the holder of an "Age and Schooling Certificate". Section 4109.12, supra, in turn, sets out what no one can do if under eighteen.

An "Age and Schooling Certificate", which is issued only to age eighteen, would avail a minor nothing in an attempt to do those things set out in Section 4109.12, supra.

Research reveals one instance where the same general question was raised and you are referred to Opinion No. 1980, Opinions of the Attorney General for 1947, at page 333.

Branch four (4) of the syllabus reads as follows:

"4. Sections 12993 and 13007-3, General Code, are not in conflict. Section 12993 applies to a child under sixteen years of age who is employed in a place of amusement, except when he is employed in irregular service, as defined in Section 12993-3, General Code, or holds an age and schooling certificate. Section 13007-3 applies to a child under eighteen years of age who is employed in a place of amusement, only when intoxicating liquors, as defined by Section 6064-1, General Code, are sold in such place of amusement."

Section 12993, General Code, was the predecessor of Section 4109.10, Revised Code, and Section 13007-3, General Code, was the predecessor of Section 4109.12, Revised Code.

Opinion No. 1980, Opinions of the Attorney General for 1947, supra, is approved and followed to the extent the conclusions therein apply to the question here.

Therefore, it is my opinion and you are advised that "Age and Schooling Certificates" referred to in Section 4109.01, Revised Code, can be issued under Chapter 3331., Revised Code, as legitimate cause therefore arises. Their implementation and use must be governed by any other applicable code section, including Sections 4109.01, 4109.10 and 4109.12, Revised Code, and the prohibitions contained therein against employment of minors under eighteen years of age in certain specified occupations.