

839.

FEMALE EMPLOYEES OVER EIGHTEEN YEARS OF AGE
MAY BE EMPLOYED MORE THAN FORTY-EIGHT HOURS
IN ANY ONE WEEK, WHEN.

SYLLABUS:

Female office employees over eighteen years of age may, under the provisions of Section 1008-2 of Amended Senate Bill No. 287 enacted by the 92nd General Assembly, be employed for forty-eight hours in any one week.

COLUMBUS, OHIO, July 6, 1937.

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

DEAR SIR: This will acknowledge receipt of your recent request for my opinion which reads in part as follows:

"In Section #1008 of the Ohio Laws governing female labor, under paragraph entitled 'Work Hours' you will find the following:

'Females over 18 years of age shall not be employed or permitted or suffered to work in, about or in connection with any factory, workshop, etc., more than the number of hours specified therein.'

In Amended Senate bill #287, Section #1008-2, we find the following:

'No employer shall employ a female for more than 48 hours in any week, 8 hours in any day or more than 6 days in any period of 7 consecutive days, except in *manufacturing establishments* a female may not be employed more than 48 hours in any one week, etc.'

Inasmuch as business offices are named in the new Act and females are permitted to work 48 hours per week, we are desirous of knowing whether or not the 48 hours or the 45 hours shall apply to offices of manufacturing establishments."

It should first be noted that, that portion of Amended Senate Bill No. 287 designated as Section 1008-10, provides in part that violators of Section 1008-2, General Code, "shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars or by imprisonment for not more than sixty days or by both in the discretion of the court." Therefore it is clear that Section 1008-2, General Code, is a penal

section. The rule of statutory construction of penal provisions is, as stated in 37 O. J. 744:

Section 1008-2, General Code, is a penal section. The rule of statutory construction of penal provisions is, as is stated in 37 O. J. 744:

“It is the well settled general rule recognized by the General Code that a strict construction is to be accorded to penal statutes.”

The section of the General Code referred to in the above quotation is Section 10214, which is at the beginning of the Third Part of the General Code. This part of the General Code deals with procedural and remedial matters only, and said section reads as follows:

“The provisions of part third and all proceedings under it shall be liberally construed, in order to promote its object, and assist the parties in obtaining justice. The rule of the common law, that statutes in derogation thereof must be strictly construed has no application to such part; but this section shall not be so construed as to require a liberal construction of provisions affecting personal liberty, relating to amercement, *or of a penal nature.*” (Italics ours.)

As is indicated in the quotation from Ohio Jurisprudence above cited, this clearly is a statutory recognition of the general rule of strict construction of penal statutes.

Although at first glance the language used in Section 1008-2 appears to set up an exemption for manufacturing establishments, a careful reading of the statute reveals that it is not an exemption from a restrictive provision of a penal act, but is on the contrary, a classification wherein the restrictive provisions are more stringent. Therefore it cannot be argued that the portion of the section to which you refer, to-wit: “except in manufacturing establishments a female may not be employed more than forty-five hours in one week, etc.”, is an exemption from a penal provision and therefore should be liberally construed.

The above rule of strict construction of penal statutes dictates that such statutes be construed most strictly against the state and in favor of the accused. *State vs. Cincinnati Fertilizer Co.*, 24 O. S. 611, 614. Therefore I am constrained to approach this matter from the view of a court determining the case of a party charged with violation of Section 1008-2, General Code, by the employment of females in the office of manufacturing establishments in excess of forty-five hours a week. The issue resolves itself around the construction of the words “manu-

facturing establishments." There are two possible interpretations. First, "manufacturing establishment" means the entire place of business wherein any manufacturing processes are carried on. Second, a "manufacturing establishment" only means that part of a place of business wherein the said manufacturing processes are carried on. Certainly the first definition is the broader and more liberal, and therefore it is clear that the latter definition being more limited and stricter, would have to be applied in conformance with the rule of strict construction against the state.

There is another avenue of approach in ascertaining the intention of the legislature in enacting Amended Senate Bill No. 287 and that is to consider the purpose of the legislation and the condition it was intended to alleviate. In stipulating a lower maximum hours of work for females in manufacturing establishments, the legislature obviously had in mind that such employment was more arduous in nature than employment in other capacities and more potentially dangerous to the health. If, as I believe, that was the intention of the legislature, the policy which dictated it would not apply to women employed in office work in manufacturing establishments. There is nothing from the point of view of the protection of health, to distinguish office work in a manufacturing establishment from similar office work done in other establishments.

In specific answer to your inquiry therefore, it is my opinion that female office employes in manufacturing establishments are not included within the special provision stipulated for manufacturing establishments, in Section 1008-2, enacted in Amended Senate Bill No. 287, and that said class of employes may be permitted to work forty-eight hours per week.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

840.

JURISDICTION OF JUSTICE OF THE PEACE—COUNTY-WIDE
BY STATUTE, IN CRIMINAL MATTERS—ONLY BY
WAIVER OF TRIAL BY JURY DOES JUSTICE OF THE
PEACE HAVE FINAL DETERMINATION OF THE CASE.

SYLLABUS:

Section 13422-2, General Code, effective August 21, 1937, grants