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1. MINORS—LIMITATIONS—HOURS AND TIME OF EMPLOYMENT—GENERAL IN NATURE—SECTION 12996 G. C.—UNDER PROVISIONS OF SECTION 12993-3 G. C. LIMITATIONS APPLY TO EMPLOYMENT OF MINORS IN IRREGULAR SERVICE.

2. EMPLOYMENT OF CHILDREN ON STAGE OF ANY THEATER OR OTHER PLACE OF AMUSEMENT—LIMITATIONS—SECTIONS 12996, 13007-3 G. C.

SYLLABUS:

1. The limitations on hours and time of employment of minors, as contained in Section 12996, General Code, are general in nature and said limitations apply to the employment of minors in irregular service pursuant to the provisions of Section 12993-3, General Code.

2. The limitations contained in Section 12996, General Code, are applicable to the employment of children on the stage of any theater or other place of amusement as is provided in sub-section 16 of Section 13007-3, General Code.

Columbus, Ohio, December 8, 1948

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

Dear Sir:

I am in receipt of your request for my opinion in which you state:

"This Department has always enforced Section 12996, General Code of Ohio, in accordance with its clear language. It is now being contended that minors under 18 years of age, employed in irregular service, in accordance with Section 12993-3, are not subject to the starting and stopping by limitations set forth in 12996. This contention is based upon the introductory clauses of 12993, 12993-2 and 12993-3.

"A particular instance arises as a result of the employment of a child 15 years of age, as a vocalist with an orchestra in a dance hall where no intoxicating liquors are sold after the hour of 6:00 o'clock P. M. Eastern Standard Time. This Department has always considered such employment not only a violation of Section 12996 but also a violation of Section 13007-3 (16). In this connection reference is made to 1920 O. A. G. page 609,

which would indicate that the phrase 'when not otherwise prohibited by law' in 13007-3 (16) refers only to the age and schooling certificate."

Section 12996, General Code, states:

"*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 calendar week, (2) nor more than forty-eight hours in any calendar 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; 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 any one day of the week 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. *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, except that in mercantile establishments a girl sixteen to eighteen years of age may be employed two evenings in a calendar week until nine thirty o'clock. The presence of such child in any establishment during working hours shall be prima facie evidence of its employment therein. In estimating such periods the time spent at different employments or under different employers shall be considered as a whole and not separately. Provided, however, that no restrictions as to hours of labor of persons sixteen years of age or over shall apply to canneries or establishments engaged in preparing for use agricultural or horticultural perishable foods during the growers' harvest season when they are engaged in canning or preserving the farmers' perishable products." (Emphasis added.)

This section of the General Code refers to Section 12993, General Code. However, such reference would not incorporate all the provisions of Section 12993, General Code, within the provisions of Section 12996, General Code. Specific reference is made to "any establishment or occupation named in section 12993." The clearly expressed intent of the General Assembly, when enacting Section 12996, General Code, was only to include in said section the twenty-six occupations and businesses listed in Section 12993, General Code. In other words, the General Assembly

could have arrived at the same result by listing these twenty-six occupations and businesses in Section 12996, General Code.

Section 12993, General Code, provides:

> "*Unless he either is employed in irregular service as defined by section 12993-3, General Code, or is the holder of an age and schooling certificate issued* under section 4851-2, section 4851-4, or section 4851-5, General Code, no child under sixteen years of age shall be employed, permitted or suffered to work in or about any (1) mill, (2) factory, (3) workshop, (4) oil-well or pumping station (5) cannery or bottling or preserving establishment, (6) mercantile or mechanical establishment, (7) tenement house, (8) garment making or dress making or millinery establishment or working rooms, (9) store, (10) office, (11) office building, (12) laboratory, (13) restaurant, (14) hotel, boarding house, or apartment house, (15) bakery, (16) barber shop, (17) boot-black stand or establishment, (18) public stable, (19) garage, (20) laundry, (21) place of amusement, (22) club, (23) or as a driver or chauffeur, (24) or in any coal yard or brick, lumber, or building material yard, (25) or in the construction or repair of buildings, (26) or in the transportation of merchandise; nor if a boy in the personal delivery of messages. No female under twenty-one years of age shall be employed in the personal delivery of messages.
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> "No child under sixteen years of age shall be engaged in school and employed more than nine hours together in any one day and no child under fourteen years of age shall be employed more than four hours in one day." (Emphasis added.)

It is stated in the first paragraph of this section that a child under sixteen years of age must meet one of two requirements before he can be employed. He must either be employed in irregular service as defined in Section 12993-3, General Code, or be a holder of an age and schooling certificate issued pursuant to Section 4851-2, Section 4851-4 or Section 4851-5, General Code. You state in your request for my opinion that it is now being contended that the limitations set forth in Section 12996, General Code, do not apply to the irregular employment provisions of Section 12993-3, General Code. In other words, it is contended that an employer may employ a minor under eighteen years of age at any hour of the night or day, the only limitations on such employment being the restrictions contained in Section 12993-3, General Code. Said section provides:

> "*Notwithstanding the provisions of sections 12993 and 12993-2 of the General Code*, a child may be employed in irregular

service not forbidden by sections 13001, 13002 or 13003 of the General Code without holding an age and schooling certificate.

"Irregular service shall be interpreted to mean service not forbidden by federal child labor laws which (a) does not involve confinement, (b) does not require continuous physical strain, (c) is interrupted with rest or recreation periods and (d) does not require more than four hours of work in any day or twenty-four hours in any week. The health commissioner of the district in which employment is afforded to any child shall determine whether the employment involves confinement or requires continuous physical strain so that it cannot be deemed irregular service within the meaning of this section." (Emphasis added.)

The pertinent portion of Section 12993-2, General Code, provides:

"Except as provided in section 12993-3 of the General Code, no minor of compulsory school age shall be employed or be in the employment of any person, firm or corporation in any of the occupations mentioned in section 12993 of the General Code, unless such minor presents to such person, firm or corporation, a proper age and schooling certificate, as a condition of employment. * * *"

As has been stated hereinbefore, it is my conclusion that the reference made in Section 12996, General Code, to Section 12993, General Code, is limited to the twenty-six occupations or businesses listed in Section 12993, General Code. In other words, there is no requirement that Section 12993-3, General Code, be read in pari materia with Section 12996, General Code. Section 12996, General Code, is a separate section and is applicable to the twenty-six businesses and occupations as listed in Section 12993, General Code, and the limitations on employment contained in Section 12996, General Code, are applicable to irregular employment. This conclusion is further substantiated by the introductory sentence of Section 12996, General Code. As can be seen, the opening statement of this section states *"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 occupations named in section 12993." This introductory sentence accepts no limitations and by the terms used it is clear that the General Assembly intended to include all minors within the provisions of said section. Therefore, it is clear beyond any doubt that Section 12996, General Code, is universal in its application and is not limited by the provisions of Section 12993-3, General Code, but conversely, the limitations found in Section 12996, General Code, are ap-

plicable and are binding on employers employing minors in irregular service pursuant to the provisions of Section 12993-3, General Code.

There is no provision in Section 12993-3, General Code, which states that the general limitations as to time of employment of minors as set forth in Section 12996, General Code, should not be applicable to minors employed in irregular service. The first provisions for limitations on the number of hours a minor could be employed were enacted by the Fiftieth General Assembly to become effective March 19, 1852. The General Assembly has reenacted limitations numerous times as to the number of hours a minor may be employed.

Provisions for irregular service of children were first enacted by the Eighty-First General Assembly in 1921 (109 O. L. 376, at page 381). This enactment was codified as Section 7765-2, General Code, and was identical with Section 12993-3, supra, with the exception that the General Code sections which were referred to in the first sentence were different. This is easily understood when it is noted that subsequent to this enactment, the sections of the General Code referred to pertaining to employment of minors were rearranged to be more consistent. When the Ninety-Fifth General Assembly, in 1943, rearranged most of the provisions for the employment of minors, said section number was changed to Section 12993-3, General Code, and the sections referred to in the first sentence of said section were corrected to the new arrangement of sections (120 O. L. 475, at page 609). The provisions for irregular service are of comparatively recent origin. There can be no doubt that the limitations on employment of minors as found in Section 12996, General Code, would be in full force and effect and are not repealed by the more recent enactment of Section 12993-3, General Code.

The provisions which have been enacted by the different General Assemblies relative to employment of minors and to the hours of the day or night when minors can be employed were generally motivated for two reasons, the principal reason being that children are not in a position to protect themselves adequately and, secondly, to protect the morals of children. If it were to be found, as is contended, that irregular hours of employment were not subject to the provisions of Section 12996, General Code, both of these principles would be violated. A child working late evening or early morning hours would be deprived of sleep which health authorities unanimously agree is one of the basic necessities for the physical and psychologi-

cal development of children. If such children were allowed to work these hours, they certainly would be subjected to corruption of their morals, being on the streets going to and from their employment during unreasonable hours.

The original act which provided limitations for the employment of minors was entitled "An Act to prevent the engagement of children in such employment whereby their lives and limbs may be in danger, or their health injured, or their morals likely to be impaired." (99 O. L. 33.) No change in this original intention can be found in the present effective sections of the General Code relative to the employment of minors. Certainly the General Assembly could not be presumed to have repealed Section 12996, General Code, by the passage of Section 12993-3, General Code. The first section of Amended House Bill No. 714, as enacted by the SeventySeventh General Assembly (99 O. L. 30) in part provides:

> "* * * To make the minor labor law conform with the compulsory education law and providing a way to determine the physical fitness of minor labor under 16 years of age, * * *."

This intention of the General Assembly has not been changed in any of the amendments or changes made in the original enactment of the limitations on the employment of minors. This purpose has been followed in the current provisions of the General Code relative to the employment of minors. Section 12993, General Code, specifically refers to Sections 4851, 4851-4 and 4851-5, General Code, which are portions of the compulsory school attendance provisions of the General Code. These provisions are found in Sections 4851 to 4852-1, inclusive, General Code. Analyzing all of these provisions relative to compulsory school attendance and employment of minors, it can not be said that any of the original intentions of the General Assembly have ever been modified or changed.

It is stated in Barker v. State, 69 O. S. 68, at page 74:

> "We are quite aware that the rule of law and of this court is that a statute defining an offense is not to be extended by construction to persons not within its descriptive terms, yet it is just as well settled that penal provisions are to be fairly construed according to the expressed legislative intent, and mere verbal nicety, or forced construction, is not to be resorted to in order to exonerate persons plainly within the terms of the statute."

In Conrad v. State, 75 O. S. 52, the first branch of the syllabus provides:

> "The rule as to strict construction of penal statutes does not require the courts to go to the extent of defeating the purpose of the statute by a severely technical application of the rule."

These statutes under consideration are penal in nature as they contain provisions for the conviction of persons who are found to be violating said provisions. If the contention that the limitations as stated in Section 12996, General Code, do not apply to minors employed in irregular service in accordance with Section 12993-3, General Code, was followed, the intent of the General Assembly would be defeated by applying an unwarranted verbal nicety or a forced construction to said section.

Section 12996, General Code, was considered by the Court of Appeals of Lucas County and by the Supreme Court of Ohio in Acklin Stamping Company v. Kutz, 80 App. 70, 98 O. S. 61. In this action, the plaintiff was injured while being employed by the defendant. The plaintiff was a minor under sixteen years of age and it was contended that employment by the defendant from the hours of five forty-five in the evening until five fifteen in the morning constituted illegal employment. It was held by the Court of Appeals and by the Supreme Court of Ohio that this contention was correct. As a result, the defendant could not receive benefit from the Ohio Workmen's Compensation Act. In the appeal of the Acklin Stamping Company, heard by the Court of Appeals of Lucas County, it is stated at page 83:

> "These statutes, quoted above, compelling education and defining offenses against minors, were intended to prevent persons of immature judgment from engaging in hazardous occupations, to prevent employment and overwork of children during the period of their mental and physical development, and to prevent competition between weak and underpaid labor and mature men owing to society the duties of citizenship; and the compensation act in no way limits their operation."

In the opinion rendered by the Supreme Court of Ohio in this case, it is stated at page 69:

> "Section 12996, General Code, provides, among other things, that no boy under the age of sixteen shall be employed to work in, about or in connection with any establishment or occupation named

> in Section 12993, General Code, before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening. Among the establishments named in Section 12993 are a mill, factory and workshop. Section 13001, General Code, prohibits the employment of a child under the age of sixteen years to assist in operating a stamping machine used in sheet metal and tinware manufacturing."

The interpretation placed on Section 12996, General Code, by both the Court of Appeals of Lucas County and the Supreme Court of Ohio was that the limitations found in Section 12996, General Code, are absolute.

You refer in your request for my opinion to sub-section 16 of Section 13007-3, General Code. The portion to which you refer is as follows:

> "No child under the age of eighteen years shall be employed, permitted or suffered to work * * * (16) nor any child under sixteen in any theater or other place of amusement, except on the stage thereof when not otherwise prohibited by law. * * *"

The conclusions which I have reached in this opinion relative to the interpretation of the preceding sections of the General Code would be equally applicable to this provision to which you refer. Section 13007-3, General Code, by its express provisions, stands by itself and is an absolute limitation as to the places where minors under the age of eighteen may be employed. Sub-paragraph 16 of said section provides that a child under sixteen years of age can not be employed "in any theater or other place of amusement." This provision then is limited by the exception that a child may be employed on the stage of a theater or place of amusement when such employment is not otherwise prohibited by law. The result would be that a minor could be employed on a stage of a theater or other place of amusement unless there is a specific provision in the law prohibiting such employment. Thus, the limitations in Section 12996, General Code, would be applicable to the employment of a child under sixteen on the stage of a theater or other place of amusement.

Therefore, it is my opinion and you are informed:

1. The limitations on hours and time of employment of minors, as contained in Section 12996, General Code, are general in nature and said limitations apply to the employment of minors in irregular service pursuant to the provisions of Section 12993-3, General Code.

2. The limitations contained in Section 12996, General Code, are applicable to the employment of children on the stage of any theater or other place of amusement as is provided in sub-section 16 of Section 13007-3, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.