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RESTAURANT—COMPANY OPERATING EATING PLACE IN OR ON PREMISES OF MANUFACTURING PLANT, FURNISHING MEALS AND LUNCHES TO EMPLOYES, NOT TO GENERAL PUBLIC, NOT OPERATING RESTAURANT—SECTION 843-2 G. C.

SYLLABUS:

A company operating an eating place in or on the premises of a manufacturing plant pursuant to an arrangement with the owner of such plant, and furnishing meals and lunches to the employes of such plant and not to the general public, is not operating a restaurant as that word is defined in Section 843-2, General Code.

Columbus, Ohio, June 21, 1946

Mr. Harry J. Callan, State Fire Marshal
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"I have a matter for your opinion relating to the Hotel and Restaurant Laws of Ohio, Section 843-2 in particular, which are administered by the Division of State Fire Marshal.

The Fred B. Prophet Company, Industrial Restaurants, Main Office, Fisher Building, Detroit 2, Michigan. This company operates thirty-eight industrial restaurants in as many cities throughout the United States, eight of which are operated in industrial plants in the State of Ohio. Their claim is that their restaurants in Ohio do not come under Section 843-2 because of Attorney General's Opinion 1920, page 551.

It is my contention that this company should not be exempt under this ruling, for the reason that they are not a manufacturing company but a company operating restaurants in manufacturing plants throughout the State of Ohio."

Section 843-2, General Code, reads as follows:

"Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall, for the purpose of this act be defined to be a restaurant."

Your letter makes reference to an opinion rendered by one of my predecessors found in 1920 O. A. G. 551. The third branch of that syllabus reads as follows:

> "A manufacturing company operating an eating place commonly called a factory or employes' restaurant, in which meals or lunches are supplied and furnished solely to its employes, and which is never held out as a place where meals or lunches will be served to others, is not conducting a restaurant, as the word is defined in section 843-2 G. C. And the mere fact that occassionally, but not as a matter of practice, a traveling salesman or other person having business at the factory may, as a personal accommodation, be permitted to secure a meal or lunch in such factory or employes' restaurant, would not of itself constitute a holding out to the public, within the meaning of the statute."

It does not clearly appear how the establishment which was the subject of that opinion was operated.Whether the meals or lunches there served were given to the employes gratuitously or as part of the general system of their compensation, or whether they were sold to them by the manufacturing company is not disclosed. It is consistent with the opinion and rather implied in the words "supplied and furnished" that they have been served without charge, in which case the opinion was certainly sound. If, on the other hand, meals were prepared by the company and sold to its employes, it might be argued that the company was engaging in the restaurant business within the scope and intent of the statute referred to. And this argument is persuasive if we consider the purpose evidently sought to be accomplished by this legislation.

The manifest purpose of the act of which the section quoted is a part was to produce safe and sanitary conditions in all buildings or structures in which the general public or portions thereof might either be supplied with sleeping quarters or meals for a compensation paid. The entire act related to these matters. The fire marshal is charged with enforcing the act. The scope of the law covers all "transient" hotels and restaurants, as defined therein.

The opinion to which I have referred appears to be predicated on the idea that no place where meals are served for a consideration is within the statute unless it is "held out to the public" as such. Manifestly, the question as to what constitutes the "public" is a matter that can hardly be determined with accuracy. Must the holding out be to the *entire* world in

order to be a holding out to the public, or will an invitation to a considerable group in a certain locality or to certain classes also constitute a holding out to the public? Manifestly, an eating house catering to such groups would be just as much in need of the sanitary precautions which are contemplated by the laws in question as if it were open to the entire world. The dangers which may arise from polluted or badly prepared food do not in any wise depend upon the number or class of persons who are invited to eat the food. Necessity for precaution in the interest of public health would be just as great in one case as in the other. However, we cannot construe a law to cover ground which we are sure it ought to cover, unless by its own terms it does so. If it fails to regulate something which is just as much in need of regulation as that which is within its terms the defect is for legislative correction, and not for enlargement by construction.

While it is permissible in construing a statute which is ambiguous to consider the circumstances surrounding its enactment and the evil which it was intended to remedy, yet not even a court may read into it what the court thinks ought to be there. Speaking of this, it is said in Crawford on Statutory Construction, Section 161:

> "Consequently, when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it. Of course, if the language is unambiguous and the statute's meaning is clear, the statute must be accorded the expressed meaning without deviation, since any departure would constitute an invasion of the province of the legislature by the judiciary. And even where the statute is ambiguous, considerable caution should be exercised by the court lest its opinion be substituted for the intent of the legislature. In other words, the court must not ascribe to the lawmakers a purpose not actually that of the legislature. To do so would result in ascribing to the statute a different intent than that of the legislature."

The word "public" as used in statutes is capable of various meanings. In some cases it means the whole world, in others only a portion thereof. The various meanings are ably discussed by my predecessor in the opinion already referred to. Among the cases discussed was Cawker v. Meyer, 147 Wis. 320, where the court after stating that "it is very difficult, if not impossible, to frame a definition for the word 'public' that is simpler or

clearer than the word itself," proceeded to quote, with approval, one of the definitions found in Century Dictionary, viz.:

> "Not limited or restricted to any particular class of the community."

It was held in that case, applying the definition to the facts, that:

> "The tenants of a landlord are not the public, neither are a few of his neighbors or a few isolated individuals with whom he may choose to deal, though they are a part of the public. The word 'public' must be construed to mean more than a limited class defined by the relation of landlord and tenant, or by nearness of location, as neighbors, or more than a few who by reason of any particular relation to the owner of the plant can be served by him."

See also, South Highland Land & Improvement Co. v. Kansas City, 172 Mo. 523, 423; and Traction Co. v. Warren Co., 100 Miss. 442.

In State v. Hensley, 75 O. S. 255, the court in construing the provision of the Constitution guaranteeing to every person accused of crime the right to a "public trial," said:

> "* * * The term 'public,' in its enlarged sense, takes in the entire community, the whole body politic, and a public trial means one which is not limited or restricted to any particular class of the community, but is open to the free observation of all. This does not impose upon the authorities a duty to provide so large a place for public trials as would accommodate every member of the community at the same time, for that would be plainly impracticable, but it does import a duty to make reasonable provision in that regard, and this requirement is usually met by ample accommodations for the purpose."

I do not understand that the establishments referred to in your letter offer to serve the general public, but by arrangement with the owner of a manufacturing establishment do serve meals, on his premises, to his employes. In my opinion they are not within the terms of the law relative to licensing and inspection of restaurants.

Accordingly, in specific answer to your question it is my opinion that a company operating an eating place in or on the premises of a manufacturing plant pursuant to an arrangement with the owner of such plant,

and furnishing meals and lunches to the employes of such plant and not to the general public, is not operating a restaurant as that word is defined in Section 843-2, General Code.

Respectfully,

HUGH S. JENKINS
Attorney General