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FEMALES—EMPLOYMENT—PROVISIONS OF SECTION 1008-2 G. C., WHICH PROHIBIT EMPLOYMENT OF FEMALES IN MANUFACTURING ESTABLISHMENTS, FOR MORE THAN FORTY-FIVE HOURS, ETC., NOT IN CONFLICT WITH SECTION 12996 G. C.—EMPLOYMENT OF GIRLS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED:

1. MORE THAN SIX DAYS IN ANY ONE WEEK;
2. NOT MORE THAN FORTY-EIGHT HOURS IN ANY ONE WEEK;
3. NOT MORE THAN EIGHT HOURS IN ANY ONE DAY, IN A MILL, FACTORY, OR WORKSHOP;

CONSEQUENTLY SUCH FORMER SECTION HAS APPLICATION TO FEMALES UNDER TWENTY-ONE YEARS OF AGE, AS WELL AS THOSE OVER SUCH AGE.

SYLLABUS:

The provisions of Section 1008-2, General Code, which prohibit the employment of females in manufacturing establishments for more than forty-five 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, are not in conflict with the provisions of Section 12996, General Code, prohibiting the employment of girls under twenty-one years of age for more than (1) 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, in a mill, factory, or workshop; and consequently such former section has application to females under twenty-one years of age, as well as those over such age.

Columbus, Ohio, February 14, 1946

Hon. J. Harry Moore, Director, Department of Industrial Relations
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"Due to an apparent inconsistency between Section 1008-2 and Section 12996 of the Ohio General Code relative to certain working hours of females, the Department of Industrial Relations requests your opinion relative to the correct interpretation of these statutes.

Section 1008-2 provides in part 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; except that in manufacturing establishments a female may not be employed more than forty-five 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; * * *.'

Section 12996 provides in part as follows:

'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. * * *'

Section 12993 lists among others, the following establishments '(1) mill, (2) factory, (3) workshop, * * *.'

From a reading of all of these sections it would appear that a girl eighteen to twenty-one years might be permitted to work in any mill, factory or workshop for not more than six days in any one week, forty-eight hours in any one week, nor more than eight hours in any one day. However Section 1008-2 limits the work of any female in a manufacturing establishment to forty-five hours per week.

May we have your formal opinion as to whether Section 1008-2 limiting the hours of employment of females in manufacturing establishments to 45 hours per week, limits or restricts the hours of employment of girls 18 - 21, as set forth in Section 12996."

You have quoted the pertinent parts of Section 1008-2 and Section 12996, General Code, and it is not necessary, for the purposes of this opinion, to quote further from these sections.

While a preliminary examination of these two sections might seem to indicate a conflict between their provisions as applied to the employment of females between the ages of eighteen and twenty-one years in manufacturing establishments, it will appear from a detailed examination that there is no irreconcilable conflict which invalidates one statute because of applicability of the other.

In the interpretation or construction of statutes, the primary and paramount rule is to ascertain, declare, and give effect to the intention of the legislature, as gathered from the provisions enacted, by the application of well-settled canons of interpretation, since the ultimate function of construction is to ascertain the legislative will. A construction adopted should not be such as to defeat the obvious intention of the legislature or do violence thereto, wholly or partially, but rather one which would carry such intention into effect. 37 O. J. 504, 508.

Upon enactment every statute becomes a part of and is to be read in connection with the whole body of the law, and all statutes in pari materia should be construed to be in harmony whenever that is possible.

Frequently, however, an irreconcilable conflict between two statutes appears so that it is impossible to avoid a construction which will permit harmonizing them. In that event other rules are applied and it is then

said one statute is impliedly repealed by the other. However, a mere difficulty in reconcilability does not support an implied repeal. It must first be determined that there is an irreconcilable conflict.

So far as the provisions under consideration are concerned, they were enacted not only by the same legislature which in itself is some indication of the intent of the legislature that they be harmonized, but in the same Act, namely, Amended Senate Bill #287 (117 O. L. 539); and while there has been an amendment of each of these statutes since that time (119 O. L. 318 and 120 O. L. 63), those provisions under consideration remain the same.

In the case of In Re Allen, 91 O. S. 315, the rule is pronounced in the first proposition of the syllabus as follows:

> "Where there is reenacted in an amendatory act provisions of the original statute in the same or substantially the same language and the original statute is repealed in compliance with Section 16, Article II of the Constitution, such provisions will not be considered as repealed and again reenacted, but will be regarded as having been continuous and undisturbed by the amendatory act."

Therefore, we may consider for the purposes of determining whether or not there is a conflict, that these sections have been continuously in operation since their enactment by one Act of the legislature; and the presumption against the repeal of statutes by implication is stronger where provisions supposed to be in conflict were contained in the same act. State, ex rel. Fleisher Engineering & Construction Co. v. State Office Building Commission, 123 O. S. 70.

A situation somewhat analogous to that presented here was before the Supreme Court of Ohio in the case of Chesrown v. Bevier, 101 O. S. 282. It had been urged that Section 12614, General Code, enacted April 28, 1913 (103 O. L. 766), with reference to lights and time of displaying same, was repealed by Section 12614-3, General Code, enacted March 7, 1917, (107 O. L. 58). Those two sections read as follows:

Section 12614:

> "Whoever operates or drives a motor vehicle upon the public roads and highways without providing it with sufficient brakes to control it at all times and a suitable and adequate bell

or other device for signalling, or fails during the period from thirty minutes after sunset to thirty minutes before sunrise to display a red light on the rear thereof and three white lights, two on the front and one on the rear thereof, the rays of which rear white light shall shine upon and illuminate each and every part of the distinctive number borne upon such motor vehicle, the light of which front lamps to be visible at least two hundred feet in the direction in which such motor vehicle is proceeding, shall be fined not more than twenty-five dollars. Provided that motor vehicles of the type commonly called motorcycles shall display one white light in front to be visible at least two hundred feet in the direction in which such motor vehicle is proceeding, and one rear combination red and white light, showing red in the direction from which such motor vehicle is proceeding, and such rear light and clearly illuminate the distinctive license identification mark to be so placed that it will reflect its white light upon and fully and clearly illuminate the distinctive license identification mark of such motor vehicle."

Section 12614-3

"It shall be the duty of every person who operates, drives or has upon any public street, avenue, highway or bridge a vehicle on wheels, during the time from one hour after sunset to one hour before sunrise, to have attached thereto a light or lights the rays of which shall be visible at least two hundred feet from the front and two hundred feet from the rear. Provided, however, that this section shall not apply to a vehicle designated to be propelled by hand or to a vehicle designed principally for the transportation of hay or straw while loaded with such commodities. A person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed twenty-five dollars."

In its opinion, at page 287, the court said:

"While it is difficult to reconcile these two provisions, yet in view of the fact that a compliance with the provisions of Section 12614 by a driver of a motor vehicle complies in all respects with Section 12614-3, and in view of the fact that Section 12614 contains certain other seemingly necessary provisions with reference to motor vehicles not contained in Section 12614-3, it cannot be said that the whole field has been covered by Section 12614-3. We are, therefore, forced to the conclusion that it was not the intention of the legislature by the enactment of Section 12614-3 to repeal any of the provisions of Section 12614. * * * Section 12614-3 applies to all vehicles, including motor vehicles,

> and a violation of Section 12614-3, by a driver of a motor vehicle, would also be a violation of Section 12614, but a violation of Section 12614 by a driver of a motor vehicle need not necessarily be a violation of Section 12614-3. Since the driver of a motor vehicle is not excused by Section 12614-3 from complying with Section 12614 and displaying two white lights on the front and one red light on the rear from thirty minutes after sunset to thirty minutes before sunrise, the error (in the charge of the trial court) in this respect was not prejudicial."

Likewise, while it may be difficult to reconcile Sections 1008-2 and 12996, General Code, the analogy to the situation presented in Chesrown v. Bevier, supra, would induce these conclusions:

Section 1008-2 applies to all females, including those between the ages of eighteen and twenty-one years employed in the occupations and establishments mentioned in Section 12993, General Code, and a violation of Section 12996 would also be a violation of Section 1008-2, but a violation of Section 1008-2 would not necessarily be a violation of Section 12996. There is nothing in Section 12996 which excuses an employer from complying with the provisions of Section 1008-2.

Although there may be an overlapping of the provisions of these two statutes, there is no repugnancy so far as the policy of law is concerned in making the same act an offense against two different statutes. 12 O. J. 226.

Furthermore, statutes of this kind are strictly penal in nature. They prohibit the doing of certain things, namely, the employment of females and minors under certain conditions therein specified. They do not in any manner amount to a permission or grant of a right to an employer to do certain things. If that were the situation, it might of course be urged that where the state had granted a right or privilege by one statute it would not by another statute impliedly limit that right. Such a situation is not presented here.

Nor is it necessary for the purposes of this opinion to define "manufacturing establishments" as that term is used in Section 1008-2, General Code. Section 12993, General Code, enumerates a great many places of employment which obviously are not "manufacturing establishments" under any definition of that term. As to those places of course the provisions in Section 1008-2, General Code, relating to employment in manu-

facturing establishments have no application. Where, however, a female is employed in a manufacturing establishment to which the provisions of Section 1008-2, General Code, are applicable, that section prohibits employment of such person more than forty-five 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 regardless of the fact that it would be no violation of Section 12996 to employ such person as much as forty-eight hours in one week.

Therefore, in specific answer to your inquiry, you are advised that in my opinion the employment of females eighteen to twenty-one years of age in a manufacturing establishment for more than forty-five 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 is a violation of Section 1008-2 of the General Code.

Respectfully,

HUGH S. JENKINS

Attorney General.