1268.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, $134,000.00.

COLUMBUS, OHIO, October 4, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Youngstown, Mahoning County, Ohio, $134,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds in the aggregate amount of $350,000, dated September 1, 1937, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1269.

REGULATING HOURS OF LABOR OF FEMALES AND MINORS—RAILWAY LABOR ACT—AGREEMENTS.

SYLLABUS:

Sections 1008 *and* 1008-11, *inclusive, and Section* 12996, *General Code, regulating the hours of labor of females and minors, do not apply to employes subject to provisions of the Railway Labor Act when employers pursuant to that act entered into agreements with their employes with respect to working conditions and hours of labor.*

COLUMBUS, OHIO, October 5, 1937.

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

DEAR SIR: This will acknowledge receipt of your letter of recent date

wherein you inquire as to whether or not the provisions of Amended Senate Bill No. 287, enacted by the 92nd General Assembly, apply to railroads which are engaged in intertstate commerce subject to the Interstate Commerce Commission and which have entered into agreements with their female employes with respect to hours of labor pursuant to the provisions of the Railway Labor Act.

Amended Senate Bill No. 287, which became effective August 19, 1937, amended Sections 1008 and 12996, General Code, and enacted supplemental Sections 1008-2 to 1008-11, inclusive, General Code. The purpose of the aforementioned senate bill is to regulate the hours of labor of females and minors. It is not necessary for the purpose of this opinion to quote the sections of the General Code hereinabove referred to. Suffice it to say that under these sections the legislature placed certain limitations upon the hours per week and per day that females and minors may be employed.

The Supreme Court of the United States in the case of *Muller* vs. *Oregon,* 208 U. S. 14, held that the regulation of hours of labor of women is within the police power of a state, so that there can be no question but that the legislature in the exercise of its police power had ample authority to enact Amended Senate Bill No. 287 for the purpose of regulating the hours of labor of females and minors.

Sections 1008 to 1008-11, inclusive, and 12996, General Code, were considered in Opinion No. 1057 rendered by me on August 24 of this year. The question under consideration in that opinion was the applicability of the foregoing sections to females and minors employed in national banking associations, state chartered bank members of the federal reserve system and other banking institutions. In concluding that the foregoing provisions applied to certain banking institutions, I held as set forth in the first branch of the syllabus:

> "The State of Ohio has, in the exercise of its police power, the right to regulate the hours of labor per day and week of females and minors employed in National banks and State chartered banks members of or affiliated with federal financial agencies, such as the Federal Reserve System and the Federal Deposit Insuranc Corporation, in cases where said banks are situated within the territorial limits of Ohio, in the absence of Federal regulation along the same line."

It is to be noted that the conclusion reached in the foregoing opinion was based on the theory that Congress did not enact any law regulating the hours of labor of females and minors employed by certain banking institutions and by reason thereof the State of Ohio in the exercise of its

police power had the authority so to do.

A similar question was considered in Opinion No. 1012, rendered August 13, 1937. The question involved in this opinion was whether or not a regulation promulgated by the Public Health Council of this state relating to sleeping quarters and prohibiting any person from living or sleeping in any room used as a restaurant, applied to dining cars on railroads. In concluding that the regulation did not apply to dining cars, I stated, however, that the Public Health Council could have in the reasonable exercise of its police power regulated dining cars. Thus, I held as set forth in the second branch of the syllabus:

> "The State of Ohio has ample authority in the exercise of its police power to regulate dining cars within its territorial limits in the absence of Federal regulation along the same line, notwithstanding the fact that such dining cars are being used in interstate transportation. Such a regulation would not contravene the commerce, due process and equal protection of the law clauses of the Federal Constitution."

Here again my conclusion was predicated upon a theory that there were no federal regulations along the same lines.

The authority of a state, in the absence of legislation by Congress, to enact laws in the exercise of its police power for the purpose of establishing reasonable regulations as are appropriate for the protection of the health and safety of its citizens is no longer debatable, even though such legislation may affect interestate commerce. *Railroad Co.* vs. *New York,* 165 U. S. 628. However, when Congress enacts legislation in regard to interstate commerce pursuant to the power conferred upon it by the Constitution, the power of the state to regulate ceases and if there is a conflict between a state and federal legislation, the former must yield to the latter. *Eric Railroad* vs. *New York,* 233 U. S. 671.

Having established the authority of this state to enact Amended Senate Bill No. 287, regulating the hours of labor of females and minors, as being in the exercise of its police power, it now becomes necessary to determine whether or not there is any conflict between the state law and the Railway Labor Act enacted by Congress in 1926 and amended in 1934. The Railway Labor Act, 45 U. S. C. A., Sections 150, et seq., defines an employer as all carriers subject to the Interstate Commerce Act. Employe is defined as *"every person in the service of a carrier * * * who performs any work defined as that of an employe or subordinate official in the orders of the Interstate Commerce Commission."*

One of the general purposes of the act as provided in Section 151a is to provide for the orderly settlement of all disputes concerning rates

of pay or working conditions. Section 152 provides that it shall be the duty of all carriers, their officers, agents and employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions. The general purpose of the Railway Labor Act is to secure the right of collective bargaining to employes whose interests are involved through representatives chosen by a majority of the employes and to promote peaceful consideration of labor disputes. It is true that the Railway Labor Act does not specifically mention hours of service and it might be argued therefore that the state law and the federal law can stand together in that the form of the Railway Labor Act seems to have invited and to have left the subject regarding the hours of service relating to females and minors open for supplemental state legislation if necessary, and that the General Assembly in enacting Amended Senate Bill No. 287 has simply supplemented the action of Congress.

A contention similar to the foregoing was presented to the Supreme Court of the United States in the case of *Erie Railroad* vs. *New York, supra,* concerning a law enacted by the State of New York as it related to the Hours of Service Act of 1907 enacted by Congress. The court at page 683 disposed of the argument in the following language:

> "We realize the strength of these observations, but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. *It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.*"

The principle of law laid down by the court in the foregoing decision is that after Congress acts on a matter within its exclusive jurisdiction there is no division of the field of regulation.

In the case of *Long Island Railroad Co.* vs. *Department of Labor,* 256 N. Y. 498, the question considered by the Court of Appeals of New York was whether or not the labor law of New York regulating the hours of work of laborers, workmen and mechanics upon the elimination of railroad grade crossings applied to employes of carriers when the carriers were directed to perform the work by its own employes. The court, referring to the Railway Labor Act, said at page 516:

> " * * * It provides a method for fixing wages of employees by free contract or adjustment of labor disputes. It includes as an employee subject to its provisions 'every person in the service of a carrier * * * who performs any work defined as that

of an employee or subordinate official in the orders of the Interstate Commerce Commision.' Its purpose of ending labor disputes may be thwarted by any regulation of the State compelling payment of wages to 'employees' at a different rate. It seems to us clear that Congress intended to exclude any interference by any State in the field of wages of employees of interstate carriers. The Labor Law of this state may for these reasons not be applied to any 'employee,' as defined in the Federal act, where the carrier is directed to perform work by its own employees."

In view of the above and in specific answer to your question, it is my opinion that Sections 1008 to 1008-11. inclusive, and Section 12996, General Code, regulating the hours of labor of females and minors, do not apply to employes subject to the provisions of the Railway Labor Act when employers pursuant to that act entered into agreements with their employes with respect to working conditions and hours of labor.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1270.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, $26,000.00.

COLUMBUS, OHIO, October 6, 1937.

State Sinking Fund Commission, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Youngstown, Mahoning County, Ohio, $26,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of October 4, 1937, being Opinion No. 1268.