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MESSENGER SERVICE—FEMALE UNDER AGE TWENTY-ONE YEARS — EMPLOYED BY NEWSPAPER COMPANY TO DELIVER AND PICK UP ADVERTISING COPY AND ADVERTISING PROOF—SUCH EMPLOYMENT NOT FORBIDDEN BY LAW — NOT EMPLOYED IN DELIVERY OF MESSAGES — SECTION 12993, G. C.

SYLLABUS:

A female under the age of twenty-one years of age, engaged and employed by a newspaper company to deliver and pick up advertising copy and advertising proof, is not employed in the delivery of messages as contemplated by the provisions of Section 12993, General Code, and such employment is not forbidden by law.

Columbus, Ohio, May 13, 1943.

Hon. George A. Strain, Director, Department of Industrial Relations,
Columbus, Ohio.

Dear Sir:

I have your letter requesting my opinion, reading as follows:

“Section 12993 of the General Code, among other provisions, provides that no female under twenty-one years of age shall be employed in the personal delivery of messages.

It is my desire to ascertain whether the employment of a female under the age of twenty-one years, engaged by a newspaper company to deliver and pick up advertising copy and advertising proofs, can be construed as an occupation, within the aforesaid quoted provisions."

As your inquiry seems to center around Section 12993 of the General Code, I quote that section, which reads as follows:

"Unless he either is employed in irregular service as defined by section 7765-2, General Code, or is the holder of an age and schooling certificate issued under section 7766-3, section 7766-4, or section 7766-9, 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) oilwell 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.

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."

The sections of the General Code referred to in that statute are part of the provisions of law relating to child labor with reference to the laws relating to compulsory education. I do not deem it necessary to quote extensively or discuss the provisions of these statutes. However, by way of background, it may be noted that Section 7762, General Code, provides that a child between six and eighteen years of age is of compulsory school age, and provides further that the parents or other persons who have the care of a child of compulsory school age shall see to his education, particularly in certain branches which are specified by statute, unless he is employed on "age and schooling certificate", or it shall be determined, as provided in subsequent sections, that he is mentally incapable of profiting by further instruction.

Section 7763 makes it illegal to employ a minor within the compulsory

school age unless there has been obtained the proper age and schooling certificate, which by the terms of Section 7766, et seq., is to be issued to a child over 16 years of age who has satisfactorily passed the tests for the completion of the work of the 7th grade. The particular sections referred to in Section 12993, which I have quoted, relate to age and schooling certificates under circumstances which depart somewhat from the standard above noted.

Section 7765-2 permits children to be employed without holding an age and schooling certificate in types of service which are irregular and require only a short period of service in a day or week.

Section 7766-3 relates to what is called a "limited" certificate, the limitation being one which is confined to certain occupations for which the child is, as certified by the school physician, physically fitted.

Section 7766-4 provides for what is called a "non-standard certificate", issued for a child over 14 years of age who has been determined, in the manner provided by law to be incapable of profiting substantially by further instruction. In this case the hours of service are limited to four hours in any day.

Section 7766-9 relates to what is known as "part-time and vacation age and schooling certificate", which permits a child above 14 years of age to work for certain limited hours when school is not in session.

It will be seen that the provisions to which I have called attention, both in Section 12993 and the related sections referred to, have no direct bearing on the status of a girl who is over compulsory school age but still under 21 years of age. It would appear further that the prohibition against the employment of any female under 21 years of age in the personal delivery of messages is quite foreign to the balance of the section and to its evident purpose. Section 12993 was plainly intended to make it unlawful to employ a child of either sex under the age of 16 years in any one of the twenty-six lines of business there specified, unless such child held an age and schooling certificate contemplated by the several sections above referred to, and further to provide that "no female under 21 years of age shall be employed in the personal delivery of messages." The sentence last quoted certainly has nothing to do with "age and schooling certificates." In its terms it is positive and unconditional.

The real question to be determined is whether the employment of a girl under 21 years of age, by a newspaper company, to deliver and pick up advertising copy and advertising proof, is within the intent of the

statute which forbids such girl to be employed in the personal delivery of messages. It appears obvious to me that the statute in listing these occupations was intended to deal with businesses of the particular classes named and nothing else. In other words, the Legislature had in mind certain definite establishments and certain definite lines of business which were devoted primarily and more or less exclusively to the occupations therein specified. It would be a strained construction to hold that any business concern which would have occasion at times, merely as an incident to its business, to send an employe out to deliver or pick up a paper, was carrying on the business of personal message delivery or that such employe was one engaged in the personal delivery of messages within the contemplation of the statute.

There are certain classes of business firms and corporations which are distinctly engaged in the delivery of messages. Messenger delivery corporations are not unknown to the law. Such also is the department of the telegraph companies known as the "messenger service." In each of these cases the company holds out to the public the offer to furnish a messenger at any time during the day or night to call for or deliver, as the sender may direct, a message, or frequently small parcels, to any person within the range of its operation. This is in a sense a public service. At least it is held out to the public as a service to be had by anyone, for a stipulated compensation. It bears no resemblance to the errands which an ordinary business corporation may find it necessary or convenient to have performed, in the course of its business. It is a matter of common knowledge that the familiar messenger boy is called upon to wait on and deal with all sorts of people, including some of very dubious character, and to go in the performance of his duties into many places where one would hesitate to send a young girl. The Legislature unquestionably had in mind the purpose of saving girls of immature years from the perils that naturally would come from this class of employment.

I find no assistance from adjudicated cases or opinions of this office in answering your question. It is my opinion, however, that the class of employment suggested in your inquiry is not in any sense within the scope of the statute to which you call attention. And I find no other statute making such employment illegal.

Specifically answering your inquiry, I am of the opinion that a female under the age of twenty-one years of age, engaged and employed by a newspaper company to deliver and pick up advertising copy and advertising proof, is not employed in the delivery of messages as contemplated by the provisions of Section 12993, General Code, and that such employment is not forbidden by law.

In arriving at this conclusion, I am not unmindful of the statutes to which I have called attention, governing the employment of children who are within the compulsory school age, and in case the female employe referred to in your question is within such compulsory school age, the statutes relative to age and schooling certificate as a condition of her employment must be complied with.

Respectfully,

THOMAS J. HERBERT,
Attorney General.