

associated and used, and immediately following them, and also, in the first clause of the section, namely, the amount of common capital stated in the certificate of reorganization as that with which the reorganized company will begin to carry on business, and not the amount arrived at by adding together the amount of the company's preferred capital stock and the amount of stated common business capital referred to in paragraph "b" of section 8728-1 and paragraph seventh of 8728-5 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1268.

MINORS—EMPLOYMENT IN MOVING PICTURE SHOWS—STATUTES GOVERNING SUCH EMPLOYMENT.

Section 12968 G. C. prohibits employment of minors under fourteen in moving picture shows, etc. In sections 12993 and 13007-3 G. C. place of amusement includes moving picture shows. Under section 13007-3 G. C. a boy under sixteen or a girl under eighteen is prohibited from being employed in a theater or other place of amusement except on the stage thereof when not otherwise prohibited by law, and the phrase "when not otherwise prohibited by law" refers to the age and schooling certificate provided by law as a condition precedent to such employment.

COLUMBUS, OHIO, May 22, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your letter of recent date and enclosures therewith submitting a request for the opinion of this department, as follows, to-wit:

"We are submitting for your opinion copies of letters from the Juvenile Protective Association of Cincinnati, with reference to the interpretation and enforcement of sections 12968, 12993 and 13007-3 of the General Code, as they apply to minors employed in connection with a moving picture exhibition or performance in a theater or place of amusement."

Section 12968 G. C. provides:

"Whoever takes, receives, hires, employs, uses, exhibits, sells, apprentices, gives away, lets out or otherwise disposes of a child, under the age of fourteen years for or in the vocation, occupation, service or purpose of singing, playing on musical instruments, rope or wire walking, dancing, taking any part in, or appearing in connection with a moving picture exhibition or performance given in a theater or place of public amusement, begging or peddling or as a gymnast, contortionist, rider or acrobat, or for an obscene, indecent or immoral purpose, exhibition or practice, or for or in a business exhibition or vocation injurious to the health or dangerous to the life or limb of such child or causes, procures or encourages such child to engage therein, or causes or permits such child to suffer or inflicts upon it unjustifiable physical pain or mental suffering, or has such child in custody for any of such purposes, shall be fined not more than two hundred dollars or imprisoned not more than six months, or both."

This appears to be the only criminal statute that directly deals with the employment of children under fourteen years of age in shows, theaters, etc. It prohibits the employment of children under the age of fourteen in various vocations or occupations therein named, among which is the following: "or appearing in connection with a moving picture exhibition or performance given in a theater or place of public amusement" concerning which your question is asked. The language of the statute is clear and presents no difficulty in interpretation. No distinction is made as to sex. The phrase is "a child under the age of fourteen" and the language of the statute is prohibitive and not permissive. *No child under fourteen* may be so employed. Between the ages of fourteen and fifteen if a boy and between the ages of fourteen and sixteen if a girl, a minor may not be employed in (1) a place of amusement and (2) in any theater or other place of amusement for reasons that appear in the discussion which follows.

Other statutes deal with the employment of minors beyond the age of fourteen. At various times these have been construed in the opinions of this department, but at no time has the exact question you raise been discussed. For your convenience you are referred to the following opinions of the Attorney-General: 1913 Vol. 1, p. 938; 1914 Vol. I, p. 98, and 831; 1915 Vol. III, p. 2201; 1917 Vol. II, p. 1762.

Section 12993 G. C. says that

"No male child under fifteen years or female child under sixteen years of age shall be employed, permitted or suffered to work in, about or in connection with any * * * (19) place of amusement * * *"

This section further makes it unlawful for any child under fifteen years of age to be employed at any time during the hours the public schools are in session in any of the twenty-five employments enumerated therein, among which is (19) place of amusement, and section 12994 further requires that in the employments mentioned in section 12993 an age and schooling certificate shall be first obtained. An age and schooling certificate may be issued to a boy over the age of fifteen and to a girl over the age of sixteen on the conditions imposed by law found in section 7766 G. C. So that a boy must be over fifteen and a girl over sixteen and have an age and schooling certificate to be legally employed in "a place of amusement."

In section 13007-3 G. C. certain hazardous occupations, sixteen in number, are set down that are thought to require a greater degree of maturity and for that reason the law specifies minors to be of greater age than those in section 12993 if so employed; that is, over eighteen with no distinction as to sex, except in the last clause thereof (16) which says:

"nor any boy under sixteen or girl under eighteen in any theater or other place of amusement, except on the stage thereof when not otherwise prohibited by law."

The difficulty in the construction of the sections of the statutes herein discussed comes in determining when employment on the stage of a theater or place of amusement is otherwise prohibited by law.

Section 12968 excludes all minors under fourteen and offers no difficulty.

Sections 12993 and 12994 G. C. require that a boy must be *over* fifteen and a girl *over* sixteen years of age and have the educational qualifications necessary to secure and have secured an age and schooling certificate to be employed in a place of amusement; that is, no boy under sixteen or girl under eighteen, not having an age and schooling certificate, is permitted to be employed in a place of amusement. The second paragraph of section 12993 G. C. forbids employment of any minor under

fifteen in any business whatever not named in the first paragraph thereof during the hours the public schools are in session. So that a minor, if a boy between the ages of fifteen and sixteen, and if a girl between the ages of sixteen and eighteen, may be employed on the stage of a theater or place of amusement provided an age and schooling certificate has been secured by him or her or obtained for them by such employer.

In *Kutz vs. Acklin Stamping Co.*, 8 Ohio App. Rep. 70, citing section 12975 G. C., the court said:

"He (an employer) is prohibited by statute from employing minors under sixteen years of age before exacting from the minor the age and schooling certificate provided by law."

And further:

"And by virtue of section 12994 an employer is not only prohibited from employing a minor in any of the occupations described in section 12993, but is also prohibited from permitting a minor under sixteen years of age to work in connection with any of these vocations unless such employer has first procured from the proper authorities the age and schooling certificate provided by law."

Also:

"It will be observed by consulting 99 Ohio Laws, page 30, that it was the intention of the legislature to pass this act to provide * * * and also to make the minor labor law conform with our compulsory education law.
* * *"

The compulsory education law provides that no boy under sixteen and no girl under eighteen years of age shall be employed or be in the employment of any person during the school term unless a certificate is furnished. See section 13007-11 as amended 108 O. L., Part I p. 532.

It cannot be argued with much force that a moving picture exhibition is not comprehended in the term "place of amusement" found in section 12993, or the phrase "in any theater or other place of amusement" found in section 13007-3 G. C.

In 38 Cyc. page 258, the power to regulate places of amusement and shows extends to moving pictures.

The United States supreme court held in *Kalem Co. vs. Harper*, 222 U. S. 55-56 that a moving picture was a dramatic production.

In the construction of a lease in *Candler vs. Georgia Theater Co.*, L. R. A. 1918-F, page 389, the court says:

"The word 'theatre' in 1908 did not include a moving picture show, but in 1915, the date of the renewal of the lease, perhaps included a moving picture show."

There are no Ohio cases directly in point, but in 22 O. C. C. (n. s.) 417, it was held that a dancing pavilion is a place of accommodation and amusement.

As stated in *Parker vs. State*, 69 O. S. 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."

Then, again, in *Conrad vs. State*, 75 O. S., 52:

"The rule as to strict construction of penal statutes does not require us to go so far as to defeat the purpose of the statute by a technical application of the rule."

And *State vs. Cleveland*, 83 O. S., 61:

"A statute may include by inference a case not originally contemplated when it deals with a genus within which a new species is brought."

Since sections 12968, 12993, 12994 and 13007-3 and sections 7763, 7765 and 7766 of the compulsory education law were all amended at the same time in the same act found in 103 O. L. at page 864, they must be construed reasonably and so as to give them effect.

When the facts are such to warrant it, a proper affidavit based on any of the sections about which you inquire should be sufficient to enforce the law against one who employs minors in moving picture shows, theaters or other places of amusement.

Our conclusion is that under section 12968 a minor under fourteen may not be employed at all about a theater, moving picture show or other place of amusement.

Under section 12993 boys under fifteen and girls under sixteen are prohibited from being employed in a place of amusement whether the public schools are in session or not, and under section 12994 a boy under sixteen and a girl under eighteen may not be employed in a place of amusement without an age and schooling certificate provided by law in section 7766 G. C., which requires a boy to be over fifteen and a girl to be over sixteen and have certain educational qualifications in order to be able to secure such certificate.

Under section 13007-3 a boy under sixteen or a girl under eighteen is prohibited from being employed in a theater or other place of amusement except on the stage thereof when not otherwise prohibited by law, and the phrase "when not otherwise prohibited by law" refers to the age and schooling certificate provided by law as a condition precedent to such employment.

Respectfully,

JOHN G. PRICE,

Attorney-General.