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1. FEMALE UNDER AGE OF TWENTY-ONE YEARS — MAY BE EMPLOYED NOT MORE THAN TWENTY-FOUR HOURS IN ANY ONE WEEK IN IRREGULAR SERVICE UNDER CONDITIONS LISTED IN SECTION 12993-3 G. C.
2. EMPLOYMENT OF FEMALES UNDER AGE OF TWENTY-ONE YEARS IN OCCUPATIONS LISTED IN SECTION 12993 G. C. — LIMITATIONS UNDER SECTION 12996 G. C. SUSPENDED FOR PERIOD AMENDED SUBSTITUTE SENATE BILL 126 IS EFFECTIVE.
3. PERIOD OF SUSPENSION — FEMALES BETWEEN AGES SIXTEEN AND EIGHTEEN YEARS, HOLDERS OF AGE AND SCHOOLING CERTIFICATES, MAY BE EMPLOYED IN OCCUPATIONS LISTED IN SECTION 12993 G. C., FREE FROM RESTRICTIONS FOUND IN SECTION 12996 G. C.
4. NO MINOR UNDER AGE OF SIXTEEN YEARS MAY BE EMPLOYED IN ANY THEATRE EXCEPT ON STAGE WHEN NOT OTHERWISE PROHIBITED BY LAW.

SYLLABUS:

1. A female under the age of twenty-one years may be employed not more than twenty-four hours in any one week in irregular service under the conditions listed in Section 12993-3, General Code.

2. The limitations imposed by Section 12996, General Code, on the employment of females under the age of twenty-one years in the occupations listed in Section 12993, General Code, are suspended for the period during which Amended Substitute Senate Bill 126 is effective.

3. During such period of suspension females between the ages of sixteen and eighteen years who are the holders of age and schooling certificates may be employed in the occupations listed in Section 12993, General Code, free from the restrictions found in Section 12996, General Code.

4. No minor under the age of sixteen years may be employed in any theatre except on the stage thereof when not otherwise prohibited by law.

Columbus, Ohio, May 31, 1944

Hon. Paul J. Reagen, Prosecuting Attorney
Warren, Ohio

Dear Sir:

I have your recent request for my opinion which states the following three questions:

“1. How many hours in any one week may a girl 16 to 18 years, work in any of the occupations listed in Section 12993, Ohio General Code, while attending school?

2. What is the minimum age that a male or female may be employed in any theatre while attending school?

3. What is the limitation of hours of employees in a theatre while attending school? (1) 16 to 18 age group, and (2) 14 to 16 age group?”

Section 12993, to which you refer in your first question is 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) oil-well 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) bootblack 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.”

This section by its terms does not relate to the age group about which you inquire in your first question, but it does contain an enumeration of occupations which subsequent statutes refer to in relation to such age group.

Section 12996, General Code, relates directly to the hours of

employment of minor females. As recently amended by the 95th General Assembly, the section is 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
* * *”

The portion of the statute not quoted relates to hours of the day during which a minor may be employed, and in terms specifically provides as to the employment of minors in certain occupations.

The rule as established by the above section that no minor in the age group concerned shall work “more than forty-eight hours in any one week” is not complete, however, but is subject to qualification by the so-called compulsory education laws and certain temporary legislation now in effect, to which I shall refer later. The present General Assembly has amended the laws relating to compulsory education, and such laws have been codified as Sections 4849 to 4849-12, in Chapter 10 of Title XIV-A, General Code.

Section 4849 sets the age standard for compulsory education by stating that a child between six and eighteen years is of compulsory school age. The remaining sections of the chapter require that every child of such age shall attend school or receive the instructions therein noted, and make provision for the education and supervision of children who are the holders of an age and schooling certificate, including the requirement that a child, the holder of an age and schooling certificate, and not incapable of profiting from further education, shall attend a part time school.

Chapter XII of the same Title, comprising Sections 4851 through 4851-14, General Code, define the age and schooling certificate and provide for its issuance and use under conditions therein noted.

Section 4851 provides for the issuance of the certificate to a child over sixteen years of age for employment not forbidden by law, and sets up the requirements for the issuance of that certificate, one of which

is the agreement of the proposed employer to allow the child to attend a part time school.

Section 4851-2, General Code, relates to a non-standard age and schooling certificate for a child over fourteen, incapable of profiting from further instruction; and Section 4851-3, General Code, concerns a like certificate for a child over sixteen.

The relevancy of my reference at this point to the compulsory education laws and the laws regarding the age and schooling certificate is made clear by considering Section 12993-2, General Code, which provides that no minor of compulsory school age shall be employed in any of the occupations mentioned in Section 12993, General Code, unless such child presents to an employer a proper age and schooling certificate as a condition of employment.

In Section 12993-3, General Code, the legislature has set the standards for what is therein termed irregular service and has absolved children in employment in irregular service from the necessity of obtaining an age and schooling certificate. Section 12993-3, General Code, is as follows:

“Notwithstanding the provisions of sections 12993 and 12993-2 of the General Code, a child may be employed in irregular service not forbidden by sections 13001, 13002 or 13003 of the General Code without holding an age and schooling certificate.

Irregular service shall be interpreted to mean service not forbidden by federal child labor laws which (a) does not involve confinement, (b) does not require continuous physical strain, (c) is interrupted with rest and recreation periods and (d) does not require more than four hours of work in any day or twenty-four hours in any week. The health commissioner of the district in which employment is afforded to any child shall determine whether the employment involves confinement or requires continuous physical strain so that it cannot be deemed irregular service within the meaning of this section.”

Earlier herein I referred to temporary legislation as affecting the answer to your first question. That legislation is Amended Substitute Senate Bill 126 of the 95th General Assembly. Presently and until April 1, 1945, or until such earlier date as the governor may proclaim its

termination, that bill makes new but temporary provision regarding the employment of minors and females.

Amended Substitute Senate Bill No. 126, after providing general rules regulating the employment of females in Section 6 thereof, makes specific provision for the employment of minors, as follows:

“Section 6. No minor under the age of sixteen 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 seven o'clock in the morning or after the hour of six o'clock in the evening. No female under the age of eighteen years shall be employed in any such establishment or occupation before the hour of six A. M. or after the hour of 11 P. M. The presence of such minor in any establishment during working hours shall be prima facie evidence of his employment therein. In estimating such periods the time spent at different employments or under different employers shall be considered as a whole and not separately.”

Amended Substitute Senate Bill 126 provides that during the period of its efficacy Section 12996, General Code, along with others, shall not be operative. It can be seen that the effect of Section 6 of Amended Substitute Senate Bill 126 is to remove the limitation of hours imposed on the employment of minors over sixteen years of age in the occupations listed in Section 12993. In the case of boys the age limit is reduced from eighteen to sixteen years and in the case of girls the age limit is likewise reduced from twenty-one to the same age.

From all of the above, you are advised in answer to your first question as follows:

(1) The limitations imposed by Section 12996, General Code, on the employment of females under the age of twenty-one years in the occupations listed in Section 12993, General Code, are suspended for the period during which Amended Substitute Senate Bill 126 is effective.

(2) During such period of suspension females between the ages of sixteen and eighteen years who are the holders of age and schooling certificates may be employed in the occupations listed in Section 12993, General Code, free from the restrictions found in Section 12996, General Code.

The answer to your second question would, but for Amended Substitute Senate Bill 126, supra, be controlled by Section 13007-3, General Code. That section, deleting unessential parts, is as follows:

“No child under the age of eighteen years shall be employed, permitted or suffered to work * * *; (16) nor any boy under sixteen or girl under eighteen in any theatre or other place of amusement except on the stage thereof when not otherwise prohibited by law.”

Amended Substitute Senate Bill 126, supra, specifically suspends the operation of Section 13007-3, General Code, during the period that bill is operative. It, however, contains language in Section 8 thereof which is identical with the language of Section 13007-3, General Code, but Section 8 of Amended Substitute Senate Bill 126 was repealed by Amended Senate Bill 280 of the 95th General Assembly, effective June 8, 1943, and the latter substitutes a new Section 8 for that section as contained in Amended Substitute Senate Bill 126. The portion of Section 8 changed is that part which relates directly to the question here considered. The pertinent substituted language of the new section is as follows:

“* * * (16) nor any child under the age of sixteen years in any theater or other place of amusement except on the stage thereof when not otherwise prohibited by law.”

The rule, therefore, of Section 13007-3, General Code, is suspended because of the provisions of Amended Substitute Senate Bill 126 as amended by Amended Senate Bill 280.

In accordance with the provisions of Amended Substitute Senate Bill 126 as amended by Amended Senate Bill 280, you are advised that no minor under the age of sixteen years may be employed in any theatre except on the stage thereof when not otherwise prohibited by law.

Your third question asks what is the limitation of hours of minor employes of two age groups, first sixteen to eighteen years, and, second, fourteen to sixteen years, in a theatre. Because of the provisions of Section 13007-3 and Amended Substitute Senate Bill No. 126 of the 95th General Assembly, as amended by Amended Senate Bill 280, discussed above in connection with your second question, it may be stated that no minor under sixteen years of age may be employed in a theatre except

on the stage thereof, when not otherwise prohibited by law.

All that remains then to be answered of your third question is that which relates to minor employes of the sixteen to eighteen age group. For an answer, this question requires consideration of Section 12993, General Code, which is quoted above. Although a theatre is not specifically mentioned therein, such statute does include a "place of amusement." In an opinion of the Attorney General, found in Opinions of the Attorney General for the year 1920, Vol. I, page 609, it was determined that a place of amusement, as that term is used in Section 12993, General Code, includes a theatre. In Section 13007-3, which is in *pari materia* with Section 12993, the phrase "theatre or other place of amusement" is used. It would seem beyond question from the latter that a theatre is a place of amusement as used in Section 12993. Since the employment here considered in connection with your third question is therefore one of the occupations covered by Section 12993, General Code, the permissible hours a week for minors sixteen to eighteen years old to be employed in a theatre is found in my answer to your first question.

From the above, you are advised, and it is my opinion that:

(1) A female under the age of twenty-one years may be employed not more than twenty-four hours in any one week in irregular service under the conditions listed in Section 12993-3, General Code.

(2) The limitations imposed by Section 12996, General Code, on the employment of females under the age of twenty-one years in the occupations listed in Section 12993, General Code, are suspended for the period during which Amended Substitute Senate Bill 126 is effective.

(3) During such period of suspension females between the ages of sixteen and eighteen years who are the holders of age and schooling certificates may be employed in the occupations listed in Section 12993, General Code, free from the restrictions found in Section 12996, General Code.

(4) No minor under the age of sixteen years may be employed in any theatre except on the stage thereof when not otherwise prohibited by law.

Respectfully,

THOMAS J. HERBERT
Attorney General