OPINION NO. 73-115

Syllabus:

Neither R.C. 4111.07 nor R.C. 4111.01(B) may be interpreted so as to allow 180 half-days of work in lieu of the 90 days specified by the legislature.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, November 15, 1973

You have requested my opinion as to the effect of certain portions of Am. Sub. H.B. No. 201, which has been signed by the Governor and will become effective December 19, 1973. This Bill repeals the present minimum wage law which applies only to women and minors (R.C. 4111.01-4111.16) and replaces it with a more comprehensive act covering the great majority of employees in the State of Ohio. The new Sections of the Revised Code run from R.C. 4111.01 through 4111.13. Two of these new sections permit the employment of "learners" and "apprentices" at less than the prescribed minimum wage for a period not to exceed ninety days. R.C. 4111.02(B) and 4111.07. With respect to this aspect of the new law, your letter states:

> One of the very significant developments in Ohio education has been the recent expansion of school supervised work experience for potential dropouts. Our concern relates to the 90-day maximum for licenses issued to learners and apprentices. Many school districts in Ohio have implemented various kinds of work-study programs in which students work for a half-day and study for a half-day throughout the school year.
>
> May Sections °4111.02(B) and 4111.071 be interpreted to allow 180 half-days of work in lieu of 90 days full time?

Amended Sub. H.B. 201 defines the term "employee", so as to include all enterprises with gross sales of $95,000 or more. The term means any person employed by an employer except those specifically exluded in R.C. 4111.01(E) 1-8. One of these exclusions appears in R.C. 4111.01 (E)(7), which excludes certain student-employees from the protection of the act, in the following language:

> (E) Employee means any individual employed by an employer but does not include * * *.
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> * * * * * * * * *
>
> (7) A member of a police or fire protection agency or student employed on a part time or seasonal basis by a political subdivision of this state * * *. (Emphasis added.)

Consequently, this section will provide a specific exemption from the act for students of work-study programs who are placed with political subdivisions.

As a necessary corollary, students placed with private employees with gross sales of over $95,000 would be covered by the act, for the maxim of statutory interpretation, expressio unius est exclusio alterius, requires that those not expressly included in an exemption are excluded. Ohio River Power Co. v. Steubenville, 99 Ohio St. 421, 424-425 (1919); Cincinnati v. Roettinger, 105 Ohio St. 145, 151-152 (1922); Akron Transportation Co. v. Glander, 155 Ohio St. 471, 478-480 (1951).

Although private employers with gross sales of $95,000 or more cannot claim they are exempted from the act, they can in certain circumstances qualify some of their employees for a lower minimum wage. Under R.C. 4111.02(B), an employer may pay a "learner" only eighty percent of the prescribed minimum wage for the initial ninety days of his employment. And R.C. 4111.05 grants the Director of Industrial Relations, after consultation with an advisory board, power to promulgate regulations defining who are "apprentices", their number and length of service. The terms "learner" and "apprentice" are mutually exclusive since the former can receive only 80 per cent of the minimum wage, while the latter may receive not less than 85 per cent of such wage.

Before applying either R.C. 4111.07 or 4111.02(B), it must be determined whether a work-study participant falls within the classification of apprentice or learner. The term "learner" is defined in R.C. 4111.01(G) as follows:

> "Learner" means any individual who has had less than ninety days previous experience in the occupation in which he is employed. An employee may be employed for only one learner period. At the end of the period, the employer must give the employee a certificate showing that learning period has been served. No employee may again be required to serve a learner period by the same employer regardless of differences in types of work performed or for any other employer where the work is of a substantially similar nature. In no event may the number of learners exceed two persons or twenty per cent of the persons regularly employed in the establishment, whichever is greater, except that this limitation does not apply to a new business establishment for its first ninety days of operation.

The legislative definition of learner takes into account both employer and employee factors. An employer cannot classify more than 20 per cent of his force as learners, unless such an employer is a new business or has less than 10 employees. Thus, in certain

cases, any individual without previous experience may not be classified as a learner. Work-study participants without any previous experience may be classified as learners if (1) the employer has not already hired a staff consisting of 20 per cent learners, and (2) the participants have not already had more than 90 days experience in work of a substantially similar nature.

Students are not automatically classified as learners, and may be classified as apprentices if they meet the regulations adopted by the Director of Industrial Relations under R.C. 4111.05.

There is no indication from the wording of either R.C. 4111.01 (G) or R.C. 4111.07, that the legislature intended the term "day" to have any connotation other than its commonly understood meaning. The reference to 90 days in R.C. 4111.07 and in R.C. 4111.01(G) does not state that these days must be work days of a specific number of hours. If the legislature had intended to limit the licensing period to 90 eight-hour working days they would have so provided as they did in R.C. 4113.01 by using the words, "work day," and limiting such term to eight hours.

Further, it must be kept in mind the state minimum wage law is remedial legislation. Exemptions from remedial legislation are always construed narrowly. See, e.g. Van Meter v. S.S. Company, 5 Ohio St. 2d 185, 187-188 (1966), construing unemployment compensation statutes.

The legislature passed the minimum wage statute to avoid the multiplicity of exemptions and different minimum wages for different groups. In construing the statute it is important to keep this in mind, for as the Ohio Supreme Court said in State v. Conley, 147 Ohio St. 351, 353 (1947):

> It is fundamental in the construction and application of statute that not only the purposes to be served but the object to be obtained as well as the evil to be remedied should be considered. (Emphasis added.)

In specific answer to your question it is my opinion, and you are so advised, that neither R.C. 4111.07 nor R.C. 4111.01(B) may be interpreted so as to allow 180 half-days of work in lieu of the 90 days specified by the legislature.