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1. STANDS OPERATED BY SOCIETY FOR THE BLIND—ITEMS SOLD—WRAPPED CANDIES, CHEWING GUM, SOFT DRINKS, TOBACCOS AND RELATED ITEMS—NOT RESTAURANTS AS DEFINED IN SECTION 843-2 G. C.

2. WHERE SUCH STANDS LOCATED IN OR ON PREMISES OF MANUFACTURING PLANT WHERE SANDWICHES AND COFFEE ARE ALSO SOLD TO EMPLOYES OF PLANT AND NOT TO GENERAL PUBLIC THEY ARE NOT RESTAURANTS.

3. WHERE SUCH STANDS ARE LOCATED IN OR ON PREMISES OF HOSPITALS AND PUBLIC BUILDINGS WHERE ITEMS HEREIN ENUMERATED ARE SOLD THEY ARE RESTAURANTS WITHIN MEANING OF SECTION 843-2 G. C.

SYLLABUS:

1. Stands operated by a society for the blind which sell such items as wrapped candies, chewing gum, soft drinks, tobaccos and related items are not restaurants as that word is defined in Section 843-2 of the General Code.

2. Stands operated by a society for the blind located in or on the premises of a manufacturing plant, which sell sandwiches and coffee in addition to candies, gum, soft drinks, tobaccos and related items to the employees of such plant and not to the general public, are not restaurants within the meaning of the word as defined by Section 843-2 of the General Code.

3. Stands operated by a society for the blind located in or on the premises of hospitals and public buildings, which sell sandwiches and coffee in addition to candies, gum, soft drinks, tobaccos and related items, are restaurants within the meaning of the word as defined by Section 843-2 of the General Code.

Columbus, Ohio, July 28, 1949

Mr. Harry J. Callan, State Fire Marshal
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

"I have a question which I believe requires your opinion in relation to Section 843-2 of the Ohio General Code, which defines a restaurant as:

> 'Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall, for the purpose of this Act, be defined to be a restaurant.'
>
> "I am in receipt of a letter from the Business Manager of the Cleveland Society for the Blind. This organization operates 18 stands that serve wrapped sandwiches, and coffee. The stands are located in public buildings, hospitals and manufacturing plants. I am attaching a copy of the letter for your information.
>
> "Under the circumstances just described, should these stands be classified as restaurants, within the meaning of Section 843-2?"

The letter from the Business Manager of the Cleveland Society for the Blind reads as follows:

> "We have at present eighteen of these stands selling such items as wrapped candies, chewing gum, soft drinks, tobaccos; a few handle in addition, wrapped sandwiches, and serve coffee. The stands are located in public buildings, hospitals and manufacturing plants. The Society obtains the franchise for the setup of these stands from the owners or management of the buildings. We purchase the equipment and the merchandise, select a blind man as the operator, and supervise the stand operations. Outside of the charge assessed against the merchandise sold which amount is used entirely for the replacement of equipment, all profit derived accrues to the stand operator.
>
> "We pay no rent for the space occupied, and the purpose is to give service only to those employes working on the premises. However, it is impossible for the stand operator to distinguish, and it is possible that outsiders do patronize the stand. However, we make no attempt by way of signs or advertising to solicit this type of business.
>
> "All stands have city food licenses, state cigarette licenses and are covered by State Industrial Compensation insurance. In addition, all stands are covered with liability and fire insurance.
>
> "The State of Ohio Commission for the Blind operates stands throughout the state and their cooperation is similar to ours."

From the statement of facts presented it appears that certain stands sell wrapped candies, chewing gum, soft drinks, tobaccos and related items. We may dispose of your question relating to the stands handling only this class of merchandise on the authority of the case of Greco v. Moos-

brugger, 23 O. O. 89, 42 N. E. (2d) 211, wherein the court say, at page 91:

> "The simple question then is whether or not the soda fountain operated by the defendant is a restaurant as commonly understood or as defined in our Code. There is a definition of 'restaurant' under the chapter relating to the duties of the state fire marshal with respect to hotels, restaurants, etc., which definition is comprehensive and will answer very well in construing the term as employed in the minimum wage order.
>
> 'Section 843-2, General Code. Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall for the purpose of this act be defined to be a restaurant.'
>
> "A lunch or meal implies that that which will be served is more substantial in satisfying the normal appetite than that which is served at a soda fountain such as is operated in the instant case. A normal person certainly would not consider that the food and drink which he could secure at the defendant's soda fountain would constitute a meal one day after another and while it might provide subsistence it surely would not meet the demand of normal living."

It is therefore my opinion that the group of stands operated by the Society for the Blind which handles only the foregoing type of merchandise would not be restaurants within the meaning of that term as defined in Section 843-2 of the General Code of Ohio.

As to those stands which handle wrapped sandwiches and serve coffee in addition to the items listed above, I am of the opinion that such items would, when served to patrons of the stand, constitute the serving of a lunch. Indeed, it is common practice on the part of many people regularly to consume nothing more than sandwiches and coffee for their midday meal.

Questions involving the construction of Section 843-2 of the General Code of Ohio have been the subject of previous opinions of this office. In Opinions of the Attorney General for the year 1920, Vol. I, page 551, the then Attorney General discussed several questions with reference to what constitutes a restaurant as that word is defined in said section. Among other things that opinion, as indicated by the first three branches of the syllabus, holds as follows:

> "1. Covered movable lunch wagons on wheels, and county fair lunch stands fashioned and constructed somewhat after a

shed, come within the meaning of the words 'every building or other structure', as used in Section 843-2, General Code.

"2. Section 843-2, General Code, defining a restaurant, neither refers to nor makes the furnishing of chairs, stools or benches an element or part of the definition, whether the restaurant be commonly called a saloon, soft drink parlor, general store, or other name.

"3. A manufacturing company operating an eating place commonly called a factory or employes' restaurant, in which meals or lunches are supplied and furnished solely to its employes, and which is never held out as a place where meals or lunches will be served to others, is not conducting a restaurant, as the word is defined in Section 843-2,General Code. And the mere fact that occasionally, but not as a matter of practice, a traveling salesman or other person having business at the factory may, as a personal accommodation, be permitted to secure a meal or lunch in such factory or employes' restaurant, would not of itself constitute a holding out to the public, within the meaning of the statute."

In Opinion No. 1024, Opinions of the Attorney General for the year 1946, my predecessor in office considered the question of whether or not a private company operating eating places in or on premises of manufacturing plants were to be considered as restaurants within the meaning of Section 843-2. Following the reasoning and holding of the 1920 Opinion of the Attorney General, the syllabus of this opinion states:

"A company operating an eating place in or on the premises of a manufacturing plant pursuant to an arrangement with the owner of such plant, and furnishing meals and lunches to the employes of such plant and not to the general public, is not operating a restaurant as that word is defined in Section 843-2, General Code."

The basis upon which both opinions are predicated is that the section of the General Code defining a restaurant makes it "a necessary and indispensable element of the definition of restaurant as used in Section 843-2, that it be 'held out to the public' as a place where meals or lunches are served." The construction thus placed upon the above quoted section of the General Code by the foregoing Opinions of the Attorney General requires that the word "or" as used in the third line thereof be read as "and". I am apprised of the fact that by virtue of Section 27 of the General Code unless the context of the section would show that another

meaning were intended, the words "and" and "or" may be read interchangeably, if the sense would require it. I entertain considerable doubt that this was the legislative intent in this instance in view of the apparent purpose in enacting the legislation of which Section 843-2 is a part. This purpose was to produce safe and sanitary conditions in all buildings or structures in which meals were sold. Although I express my doubt as to the correctness of the conclusions reached in said opinions the arguments which may be presented in support of an opposite holding are not sufficiently persuasive to justify my reversing them.

Based upon the above mentioned opinion of my predecessor, you are therefore advised that such stands of the Society for the Blind as may be located in private manufacturing plants and furnish lunches to the employees of such plant and not to the general public, would not be classified as a restaurant as that word is defined in Section 843-2 of the General Code.

In both of the above cited opinions the word "public" is defined and exhaustively discussed. It appears that my predecessors expended considerable effort in arriving at the conclusion that employees of a manufacturing plant would not fall within the scope of the definition and common use of that term. Since hospitals are public institutions and although regulated so as to limit the number and hours of visitors thereto, unlike private manufacturing plants, they would be unable to restrain the general public from frequenting their buildings. Similarly, public buildings are open to the general public and the citizenry cannot be excluded therefrom. The general public having access to such buildings would consequently have access to the stands located therein. Any stands located in such buildings offering sandwiches and coffee for sale would in my opinion be serving lunches to the public for a consideration and would be classified as restaurants as that word is defined in the General Code.

In summary you are advised, therefore, that:

(a) Stands operated by a society for the blind which sell such items as wrapped candies, chewing gum, soft drinks, tobaccos and related items are not restaurants as that word is defined in Section 843-2 of the General Code.

(b) Stands operated by a society for the blind located in or on the premises of a manufacturing plant, which sell sandwiches and coffee in

addition to candies, gum, soft drinks, tobaccos and related items to the employees of such plant and not to the general public, are not restaurants within the meaning of the word as defined by Section 843-2 of the General Code.

(c) Stands operated by a society for the blind located in or on the premises of hospitals and public buildings, which sell sandwiches and coffee in addition to candies, gum, soft drinks, tobaccos and related items, are restaurants within the meaning of the word as defined by Section 843-2 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.