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EMPLOYER OR CONTRACTOR OR SUBCONTRACTOR ENGAGED IN FURNISHING GOODS OR SERVICES TO UNITED STATES OR ANY INSTRUMENTALITY THEREOF—FEMALES MAY BE EMPLOYED MORE THAN SIX DAYS A WEEK—NECESSITY—TO MEET PRODUCTION SCHEDULES, ORDERS OR REQUIREMENTS WHICH OTHERWISE WOULD HINDER OR OBSTRUCT THE WAR EFFORT—AMENDED SUBSTITUTE SENATE BILL 126, 95TH GENERAL ASSEMBLY.

SYLLABUS:

Under the terms of Amended Substitute Senate Bill No. 126 of the 95th General Assembly, an employer engaged in the furnishing of goods or services to the United States or any instrumentality thereof, or to any contractor or subcontractor so engaged, may, to the extent that the same may be necessary to meet production schedules, orders or requirements, the failure to meet which would hinder or obstruct the war effort, employ females on more than six days a week.

Columbus, Ohio, June 16, 1943.

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

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

> "Amended Substitute Senate Bill No. 126, known as the Ross Bill, passed by the 95th General Assembly and approved by the Governor on May 14, 1943, provides in Section 3 thereof:
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> 'No employer engaged in the furnishing of goods or services to the United States or any instrumentality thereof, or to any contractor or subcontractor so engaged shall employ any female in excess of fifty hours in any one week, or ten hours in any one day, or on more than six days in any week, unless, and then to the extent only, that such excess hours may be necessary to meet production schedules, orders or requirements, the failure to meet which would hinder or obstruct the war effort; and every such employer shall report to the director of industrial relations the facts respecting such excess hours within forty-eight hours thereafter; in case of continuing operation for excess hours such further reports shall be made as the director of industrial relations shall prescribe.'

Under my analysis, interpretation and construction of the foregoing quoted part of such Act, I am of the opinion that no employer coming within the aforesaid quoted exception may employ any female more than six days in any week. However, it is my desire to have you by way of a formal opinion, advise me accordingly."

Amended Substitute Senate Bill No. 126 of the 95th General Assembly became effective as a temporary law on May 14 of this year. Said Act, under the terms of Sections 1 and 11 thereof, expressly provides that certain permanent sections of the General Code shall not apply to the employment of females and minors from the effective date thereof until April 1, 1945, or such earlier date as the Governor shall by proclamation determine to be the end of the emergency created by the present war.

Section 3 of said Act, from which you have quoted in your letter, in its entirety reads as follows:

"Except as hereinafter provided, no employer shall employ a female for more than fifty hours in any one week or ten hours in any one day, or on more than six days in any week.

A female may be employed in more than one place of employment provided the aggregate number of hours such female is employed does not exceed fifty hours in any one week or ten hours in any one day, or on more than six days in any week.

Nothing in this act or in any provision of the act of April 28, 1937, vol. 117 Ohio Laws, page 539 shall apply to the employment of females in agricultural field occupations or in domestic service in private homes or to the employment of females by a communications company, or railroads as defined in section 501 of the General Code, during the periods of emergency caused by fire, flood, war, epidemic, or other public disaster or to the work of females over twenty-one years of age earning at least thirty-five dollars a week in bona fide executive positions, where real supervision and managerial authority are exercised with duties and discretion entirely different from that of regular salaried employees or to the employment of women in the professions of medicine, pharmacy, law, teaching and social work or to the employment of females over twenty-one years of age in mercantile establishments and communications companies except in cities of 5,000 population and over; or to the work of professional employees in hospitals, such as graduate and student nurses, anesthetists, technicians, graduate and student dietitians and internes; provided, however, that no restrictions as to hours of labor of persons sixteen years of age or over shall apply to canneries or establishments engaged in preparing for use, agricultural or horticultural perishable foods during the growers' harvest season

when they are engaged in canning or preserving the farmers' perishable products.

No employer engaged in the furnishing of goods or services to the United States or any instrumentality thereof, or to any contractor or subcontractor so engaged shall employ any female in excess of fifty hours in any one week, or ten hours in any one day, or on more than six days in any week, unless, and then to the extent only, that such excess hours may be necessary to meet production schedules, orders or requirements, the failure to meet which would hinder or obstruct the war effort; and every such employer shall report to the director of industrial relations the facts respecting such excess hours within forty-eight hours thereafter, in case of continuing operation for excess hours such further reports shall be made as the director of industrial relations shall prescribe. If, in the opinion of the director of industrial relations the continuation of employment of such females during such excess hours is unnecessary or is injurious to the health of such females, he shall forthwith certify the facts and his conclusions to the director of health. The director of industrial relations shall keep a complete record of all notices received hereunder and all cases certified by him to the director of health, which record shall be a public record.

If the director of health shall find that the continuation of employment of such females during such excess hours is unnecessary or is injurious to the health of such females he shall order such employer to discontinue such employment in excess of the maximum hours permitted hereunder or make such other less restrictive order with respect to the time during which such females may be employed, as said director of health shall deem appropriate in the circumstances. Within ten days after receipt of a certified copy of such order any person affected thereby may appeal on questions of law and fact to the common pleas court of the county wherein the place of employment is located. Such appeals shall be advanced for trial and heard at the earliest possible date. Pending the determination of said appeal, said order shall remain in full force and effect. No employer may employ a female in violation of the final order in such proceeding. The director of health shall keep a record of all actions taken by him hereunder which shall be a public record.

No employer shall employ a female for a period of more than five hours of continuous labor unless such period is broken by a meal period of at least one-half hour, and for the purpose of this section no period of less than thirty minutes shall be deemed to interrupt a continuous period of work, provided, however, that in the case of a female employed by a public transportation company to operate street cars, trackless trolleys or motor coaches or in the case of a female employed by a glass manufacturing company such meal period shall be of at least twelve minutes and such period of at least twelve minutes shall be deemed to inter-

> rupt any continuous period of work; provided further, that any female exclusively employed in any establishment commonly and commercially known as a gasoline service station, the majority in volume and amount of whose transactions shall consist of retail sales of petroleum products and automobile accessories and the servicing of motor vehicles, may be continuously employed for the daily maximum number of hours permitted under this act without interruption for a meal period.
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> Notwithstanding the provisions of this section, a female employed by a communications company may be employed more than six days in any period of seven consecutive days but not more than six days in any week."

It will be noted that the above section, in the first paragraph thereof, provides that "no employer shall employ a female * * * on more than six days in any week", except as may be otherwise provided in the Act.

The above language clearly indicates that the General Assembly intended to make certain exceptions to such prohibition. In the second paragraph of said Section 3, which relates to the employment of females in more than one place, the language in the first paragraph with respect to hours and days of employment is repeated. Certainly such language constitutes no exception.

An examination of the third paragraph of said section discloses that it excludes from the operation of the Act, the employment of females in agricultural field occupation, in domestic service in private homes, in communications companies or railroads during periods of emergency, and the employment of females in certain executive positions and professional work. While the provisions of this paragraph may on casual consideration thereof be regarded as an exception to the prohibition contained in the first paragraph, upon careful study of the entire act it is apparent that such provisions operate as a limitation upon the act, rather than an exception thereto.

In pointing out the distinction between a limitation and an exception in a statute, it is stated in 37 O. Jur., pages 776 and 777:

> "A limitation is present in a statute where it is made to extend to the whole state in one part thereof, and then, in another part an attempt is made to limit its operation to territory less than the entire state."

See also Wilmot v. Buckley, 60 O. S. 273.

This is clearly the case in the act under consideration herein. The first paragraph of Section 3 brings within the scope of the act all female employes, while the third paragraph of said section limits the operation of the act to females who are employed in occupations other than those enumerated in said third paragraph. In other words, the general words in the first paragraph are restrained by the language of the third paragraph. It is therefore seen that the act does not prohibit the employment of all females for more than fifty hours in any one week or ten hours in any one day, or on more than six days in any week, but merely prohibits the employment of females in certain occupations in excess of such hours and days.

For the moment I shall pass over the contentious language contained in the fourth paragraph.

Clearly, the fifth and sixth paragraphs of Section 3 contain no exceptions to the act.

This brings us to the final paragraph of Section 3. This paragraph deals only with females employed in communications companies. It is stated therein that females so employed "may be employed more than six days in any period of seven consecutive days but not more than six days in any week." Manifestly, this is no exception. The first paragraph of Section 3 prohibits employment on more than six days in any *week*. Certainly, the repetition of such words cannot be said to be an exception thereto. It is obvious from a reading of said last paragraph that the General Assembly did not, for the purposes of the act, regard every period of seven consecutive days as a week. The only interpretation which can be placed thereon is that females employed by communications companies may be employed on any number of consecutive days, so long as no more than six days of said days occurred within the period from Sunday through Saturday.

It is difficult to perceive why this paragraph appears in the act. There is nothing in the act which prohibits the employment of any female in any occupation on more than six days in a period of seven consecutive days if such seven consecutive days do not constitute a week as regarded by the act. However, that question is not before me and any discussion with respect thereto will unduly lengthen this opinion without contributing to the rationale thereof. Suffice it to say that the final paragraph of Section 3 contains no exception to the act. An examination of Sections 4 to 12 of the act discloses no exceptions.

I come now to a consideration of paragraph 4 of Section 3. If the

act contains an exception to the provisions thereof which prohibit the employment of females in certain occupations on more than six days in any week, it must appear in this paragraph. As above stated, it is evident that the General Assembly intended to create at least one exception to said prohibition, otherwise, that body would have made no reference to exceptions in paragraph 1 of said section.

Since the primary and paramount rule of statutory construction is to give effect to the intention of the Legislature, it would appear that any language of the act which is reasonably susceptible of such interpretation should be construed as an exception to the prohibition of employment on more than six days in a week. The fourth paragraph of Section 3 reads in part:

> "No employer engaged in the furnishing of goods or service to the United States or any instrumentality thereof, or to any contractor or subcontractor so engaged shall employ any female in excess of fifty hours in any one week, or ten hours in any one day, or on more than six days in any week, unless, and then to the extent only, that such excess hours may be necessary to meet production schedules, orders or requirements, the failure to meet which would hinder or obstruct the war effort."

That the words "unless, and then to the extent only that such excess hours may be necessary to meet production schedules", etc., constitute an exception to the provisions against employment in excess of fifty hours a week and ten hours a day, must be readily conceded. That the Legislature presumably intended to provide for exceptions to the prohibition of employment on more than six days a week, has already been pointed out. If that body had intended to limit the application of the above exception to fifty hours a week and ten hours a day, it might very well have so declared in the opening paragraph by stating "no employer shall employ a female on more than six days in any week and except as hereinafter provided, no employer shall employ a female for more than fifty hours in any one week or ten hours in any one day." The fact, however, that the terminology employed by the Legislature in the first paragraph of Section 3 indicates that an exception to the six day provision was intended is not in itself sufficient to create an exception to such provision. While as above stated, the primary rule of statutory construction is to give effect to the intention of the Legislature such intention must, however, be ascertained from the language of the statute itself.

It is therefore necessary to determine the connotation which the Legislature attached to the phrase "excess hours", as the same appears in the exception contained in the fourth paragraph of Section 3. I have above

pointed out that the act in question is of a temporary nature to be in effect only during the present war emergency. The declared purpose thereof is set forth in Section 12, which reads as follows:

> "This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the state of Ohio. The reason for this emergency is that this legislation is necessary for the effective prosecution of the war. Therefore this act shall go into immediate effect."

From the above, it is obvious that the General Assembly passed the act in order to facilitate increased production of essential war material, and thereby aid in the effective prosecution of the war. There can be no doubt as to what was designed to be accomplished by the Legislature.

The rule of construction which requires a statute to be given such a construction as will carry the design or purpose thereof into effect is elementary. In any case where the object sought to be accomplished by the enactment of a statute is ascertainable with reasonable certainty from the language thereof, such statute should, if its terms are in any way susceptible thereto, be accorded a construction which will achieve the purpose thereof. On this point it is stated in 37 O. Jur., pages 657 to 661:

> "Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature's purpose, or plan, or aim, or end, or motive."

Indeed, when the purpose of a statute is manifest and the legislative intent with respect thereto is clear, the terms employed by the Legislature should be held to embrace the subjects which may fall within the purpose and spirit of the statute, unless such holding is in direct conflict with the language thereof.

With respect to the departure from the literal meaning of the words of a statute, it is declared in 37 O. Jur., pages 548 to 552:

> "It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as

> we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. The manifest purpose and intent of the legislature will prevail over the literal import of the words. Hence, the courts are not always confined to the literal or strict meaning of statutory terminology—especially where there is also a more comprehensive sense in which the term is used. The letter of a law is sometimes restrained, sometimes enlarged, and sometimes the construction is contrary to the letter. Indeed, it is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter is not within the statute unless it is within the intention of the makers. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning, for he who considers merely the letter of an instrument goes but skin deep into its meaning."

To say that the General Assembly, by using the words "excess hours" intended to preserve the limitation with respect to days of employment would, in my opinion, violate those fundamental rules of statutory construction above set forth. In the very sentence where such words appear, the General Assembly has definitely said that the war effort should not be hindered or obstructed. If the war effort might be hindered or obstructed by limiting the hours of employment in any one day or week, it certainly would seem to follow that a limitation placed upon the days of employment in any week might have the same effect. If it is necessary or conducive to the effective prosecution of the war for females to be employed for more than ten hours a day under certain circumstances, it cannot be tenably argued that enforced idleness on one day of the week when similar circumstances obtain, will help win the war. Therefore, unless the words "excess hours", as the same appear in Section 3 of the act, positively preclude an interpretation under which females might lawfully be employed on more than six days in any week, it would appear that the act should be interpreted so as to permit such employment on more than six days a week in the instances set out in said section.

As a general rule, words of a statute should be given the meaning commonly attributed to them. If, however, the application of this general rule results in an interpretation which is repugnant to the intent of the Legislature as gathered from the entire statute, such rule should not be applied. In this regard, it is stated in 37 O. Jur., pages 545 and 546:

> "A statute under consideration may itself enlarge the meaning of a word used beyond its ordinary signification. The question as to the meaning of a term used in a statute is not necessarily what that term means in general use, but what it means in the statute in which it is contained. Accordingly, there may be cases

> in which the terms of a statute are given a meaning other than their ordinary one. Similarly, the natural force of the words used in a statute, taken by themselves, is not always the true test in construing a statute. It is by no means unusual to extend the enacting words of a statute beyond their natural import and effect."

In the case of State, ex rel. Belford, v. Hueston, 44 O. S. page 1, the Supreme Court of Ohio, speaking through Spear, J., said:

> "The question is not necessarily what that term means by its general use, nor what it means in legal parlance out of Ohio, but what it means here in this state, and in this statute. We are, if we can, to ascertain what the legislature intended by its use in this law. For, 'while the popular or received import of words furnishes a general rule for the interpretation of statutes, they must be interpreted according to the intent and meaning, and not always according to the letter; and where the intent can be discovered, it should be followed, though such construction seem contrary to the letter of the statute.' * * *
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> * * * no meaning of a word which has received a construction, by law or uniform custom, can be adopted from the dictionaries in conflict with that construction. And where a word is reconcilable with law or established custom in the particular manner in which it is used, a different meaning can not be given to it upon the authority of a lexicographer. Hence, if we can ascertain that this word has a meaning in Ohio, in reference to the judiciary, understood by custom and the provisions of the law relating to courts, it is reasonable to assume that the legislature made use of it intending it should receive that meaning in any construction of the law."

So, in the instant case the question is not what the word "hours" means in general use, but what it means in the act under consideration. While in ordinary usage the word "hour" has an entirely different meaning from the word "day", it by no means follows that the Legislature in using the former word in connection with the subject matter of labor intended to deal only with hours of work and not with days of employment. The word "hours" has a definite meaning in reference to labor. By custom, the time spent at his workbench by a laborer is referred to in terms of hours and seldom, if ever, in terms of days. The worker's time is kept by hours and not by days. When he receives his weekly pay envelope, he is paid for the number of hours he was employed during the preceding week.

Section 1008-5 of the General Code requires every employer of female labor to record in a time book the number of hours worked in each day by his female employes. Again, in Section 1008, General Code,

reference is made to hours and not days of employment. Said section reads in part:

> "* * * provided, however, that no restriction as to hours of labor, shall apply to canneries or establishments engaged in preparing for use perishable goods, during the season they are engaged in canning their products."

It is therefore reasonable to assume that the General Assembly, in using the word "hours", intended that it should receive the meaning given to it by established custom, in connection with the employment of labor.

Furthermore, the act contains ample provision to safeguard the health of female employes who may be required to work more than six days a week under the circumstances set out therein. It will be noted that Section 3 requires every employer who employs a female in excess of the maximum hours and days set out therein, to report the facts respecting such employment to the Director of Industrial Relations within forty-eight hours thereafter, and in case of continuing operation for excess hours, such further reports as the Director of Industrial Relations shall prescribe must be made by such employer. If, in the opinion of the Director of Industrial Relations the continuation of such employment is unnecessary or is injurious to the health of such female, it is his duty to certify such facts and his conclusions to the Director of Health. Thereafter, if the Director of Health determines that the continuation of such employment is unnecessary or is injurious to the health of such female, he is required to order the discontinuance thereof in excess of the maximum hours permitted under the act or make such other less restrictive order with respect to time during which such female may be employed, as he shall deem appropriate. The act then provides for an appeal to the Common Pleas Court by any person affected by the order of the Director of Health and that pending the determination of such appeal, the order shall remain in full force and effect.

It is thus seen that the act affords a complete remedy for any harm or ill consequence which might result from long hours of employment of females. In this regard, it should be kept in mind that the limitations placed on a woman's working hours in the permanent law are justified only because of her physical characteristics and her maternal functions. Statutes limiting the hours of labor of women have been upheld as a valid exercise of the police power of the state only because of the fact that the health of the women of the state is protected thereby.

Therefore, if the act in question is construed so as to permit the employment of females on more than six days in the week under the

circumstances set forth therein, the dual purpose thereof is fully accomplished.

In consonance with the foregoing discussion, you are advised that in my opinion an employer engaged in the furnishing of goods or services to the United States or any instrumentality thereof, or to any contractor or subcontractor so engaged, may, to the extent that the same may be necessary to meet production schedules, orders or requirements, the failure to meet which would hinder or obstruct the war effort, employ females on more than six days a week.

Respectfully,

THOMAS J. HERBERT,
Attorney General.