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FACTORIES: Sec. 10175, R. S. Mo. 1939, does not apply to employees of an electrical construction company making rural electrical installations.

July 22, 1946



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Mr. Lon N. Irwin, Director
Division of Industrial Inspection
Department of Labor and Industrial Relations
State Office Building
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of July 17, 1946, requesting an official opinion of this office, and reading as follows:

"The Associated Industries of Missouri is asking for an interpretation of Section 10175 of the Missouri Statutes referring to the employees of the operators of all manufactories, including plate glass manufactories operated in this state.

"I wish you would give us an opinion of this so that we may inform the Associated Industries of Missouri."

The letter received by you from the Associated Industries of Missouri under date of July 10, 1946, which you enclosed, reads as follows:

"Section 10175 of the Missouri Statutes refers to 'employees of the operators of all manufactories, including plate glass manufactories operated within this state.....' We would like an official interpretation of whether this Section is construed to apply to employees of an electrical construction company making rural electrical installations. Their work, of course, does not include manufacturing of any products.

"Should the employees of such a company be construed to be covered by this Section of the

Statutes, we would like an interpretation of whether or not employees of service and other types of non-manufacturing organizations are likewise considered to be covered. We have in mind particularly such organizations as public service companies, public utilities, building construction companies, warehousing establishments, retail and wholesale establishments and automobile repair shops."

Section 10175, R. S. No. 1939, to which you refer, reads as follows:

"The employees of the operators of all manufacturing, including plate-glass manufacturing, operated within this state shall be regularly paid in full of all wages due them at least once in every fifteen days, in lawful money, and at no pay day shall there be withheld from the earnings of any employee any sum to exceed the amount due him for his labor for five days next preceding any such pay day. Any such operator who fails and refuses to pay his employees, their agents, assigns or anyone duly authorized to collect such wages, as in this section provided, shall become immediately liable to any such employee, his agents or assigns for an amount double the sum due such employee at the time of such failure to pay the wages due, to be recovered by civil action in any court of competent jurisdiction within this state, and no employee, within the meaning of this section, shall be deemed to have waived any right accruing to him under this section by any contract he may make contrary to the provisions hereof."

"Manufactory" is defined as:

"A building, the main or principal design or use of which is to be a place for producing articles as products of labor; not merely a place where something may be made by hand or machinery, but what in common understanding is known as a 'factory.'" Black's Law Dictionary, page 1156.

"A place where something is manufactured; a factory." Webster's International Dictionary, Second Edition.

"Factory" is defined as:

"A building, or collection of buildings, usually with its equipment or plant, appropriated to the manufacture of goods; the place where workmen are employed in fabricating goods, wares or utensils." Webster's International Dictionary, Second Edition.

In Section 10244, R. S. No. 1939, it is provided:

" * * * The expression 'factory' means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on. * * *"

Article 8, Chapter 68, R. S. No. 1939, of which Section 10244 is a part, is entitled "Sanitation and ventilation when three or more persons are employed."

It is clear from the definitions above that Section 10175, R. S. No. 1939, does not apply to employees of an electrical construction company making rural electrical installations.

The expression of one thing is the exclusion of another in the construction of statutes. *Keane v. Strodman*, 87 S. W. (2d) 195, 323 Mo. 161.

The question of whether or not such organizations as public service companies, public utilities, building construction companies, warehousing establishments, retail and wholesale establishments and automobile repair shops are to be included under Section 10175 depends on a matter of fact, that is, whether or not, under the definitions above quoted, the particular organization is conducting business as a manufactory. In any case, where a factory is not operated, Section 10175 does not apply.

In regard to the time of payment of wages, your attention is invited to sections 5080 and 5081, R. S. No. 1939.

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CONCLUSION

1. Section 10175, R. S. No. 1939, does not apply to employees of an electrical construction company making rural electrical installations.

2. Employers who do not operate a manufactory, as defined in this opinion, or their employees, are not affected by the provisions of Section 10175, R. S. No. 1939.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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