

OPINION
43-61

June 23, 1943 (OPINION)

LABOR

RE: Hours of - Females

I have your letter of recent date, pointing out that under the provisions of chapter 153 of the 1939 Session Laws, amending laws regulating and fixing the hours of labor for females in certain industries, that the following provisions are found: "Provided, however, that this Act shall not apply to females . . . in telegraph officers where the Commissioner of Agriculture and Labor after a hearing has determined that the condition of work is so light that it does not justify the application of this Act. In such cases the Commissioner of Agriculture and Labor shall make reasonable rules and regulations under which females may be employed in such small exchanges. Provided, further, that the above law shall not apply in case of emergency; that at such time female help may be employed ten hours in one day and seven days in one week but not to exceed forty-eight hours in any one week. An emergency, as herein referred to, is defined to exist in the case of sickness of more than one female employee, in which case a doctor's certificate must be furnished, for the protection of human life, in the case of the holding of banquets, conventions, celebrations, session of the legislature in any city wherein such session is held and during the time such body is in session, or where a female is employed as a reporter in any of the courts of the state of North Dakota."

You inquire whether, under these provisions, you can hold a hearing to determine the conditions of work in several telegraph offices at one hearing, or whether you must hold separate hearings to determine the condition of work in each individual office.

It is to be regretted that the legislature attempted to define what was meant by the term "emergency". Had they merely provided that the law should not apply in case of emergency, we could certainly hold that war conditions now existing do constitute an emergency. In our opinion, conditions created by the war are far greater emergencies than those enumerated in the Act as constituting emergencies. However, the courts have uniformly laid down the rule that where a term is defined, all other definitions are excluded. By providing that the term "emergency" is defined to exist in certain designated circumstances, the Legislative Assembly thereby excluded all other emergencies. It is, therefor, impossible for us to determine that, under the provisions of this Act, the war conditions now existing constitute an emergency.

The only question remaining, therefor, is whether the hearing provided for in chapter 153 to determine whether the conditions of work are so light that the application of the provisions of the Act are not justified, means that a hearing must be held for each exchange, or whether one hearing can be held to determine the conditions of work in

several offices. In my opinion, one hearing can be held to determine the conditions of work in several offices, at which hearing, however, testimony must be introduced as to the work conditions at each individual office to be affected by the findings at such hearing. Whether conditions of work are so light as to justify a finding that the provisions of the Act shall not apply to certain offices is a matter to be determined in the sound discretion of the Commissioner of Agriculture and Labor, after such hearing. In my opinion, a separate finding should be made on the evidence as to each individual office.

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Attorney General