Opinion No. 535

Labor—Foremen and Timekeepers —Eight Hour Day—Public Works —Highways.

HELD: Foremen and timekeepers employed by the State Highway Commission or by contractors in the construction of public highways are within the scope of section 2 of Chapter 116, Laws of 1929, which provides that "a period of eight hours shall constitute a day's work" in all public works or undertakings.

May 18, 1934

Your request for opinion is as follows: "It has been our understanding that the state law limiting a day's work to eight hours applies only to skilled and unskilled labor and not to foremen, superintendents or timekeeper who perform no actual manual labor, but whose duties are purely supervisory. Some of our foremen and timekeepers are supervising two 5-hour shifts of laborers daily. We would appreciate your opinion as to whether or not such hours for foremen and timekeepers are a violation of the state law."

We think the case is covered by section 2 of Chapter 116, Laws of 1929. The section is in two parts. The first part provides that "a period of eight hours shall constitute a day's work in all works, and undertakings carried on or aided by any municipal, county, or state government, first class school districts, and on all contracts let by them," but it fails to designate the employees affected thereby. The works and undertakings mentioned are evidently works and undertakings in course of construction or which require something to be done toward their completion. (State v. Peters, 147 N. E. 81.)

The second part provides that a period of eight hours shall constitute a day's work "for all janitors, except in Court Houses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal." The buildings, works and grounds referred to are no doubt buildings, works and grounds of a permanent, completed character.

The word "work" has a much more comprehensive meaning than the term "labor," and has been defined as follows: "To exert one's self for a purpose; to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty or the like." As thus defined it covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or

amusement. (Continental Life Ins. Co. v. Turnbough, 117 South. 334; State v. Rose, 51 South. 496, 26 L. R. A. (n. s.) 821; Silver v. Harriss, 115 South. 376.)

In the case of Johnson v. Citizens' Trust Co., 136 N. E. 49, the appellate court of Indiana construed a statute different from the one under consideration, but a part of the opinion is so applicable here and so illuminating also that we take pleasure in reproducing it as follows:

"Section 1 of a statute enacted in 1877 declares:

" 'The employees of any corporation doing business in this state * * * shall be * * * entitled to have and hold a first and prior lien upon the corporate property of any corporation, and the earnings thereof, for all work and labor done and performed by such employees for such corporation, from the date of their employment, * * * which lien shall lie prior to any and all liens created or acquired, subsequent to the date of the employment. * * *' Section 8288, Burns' Ann. St. 1914.

"The receiver's contention is that the words 'work and labor,' as used in the statute, mean 'handwork, not headwork'; that the Legislature intended to give a priority to those employees only who engage in manual labor; and that Johnson, being a chemist, was pursuing a learned profession, and is therefore not within the class of employees who are entitled to the benefit of the statute. That view was adopted by the trial court.

"In determining the meaning of a statute, the first rule to be considered is that the words thereof are to be given their ordinary meaning, unless from the statute as a whole it is clear that the Legislature intended that certain words should be taken in a different sense. (Citing cases). The following definition expresses the general meaning of 'work':

" 'Exertion of strength or faculties; physical or intellectual effort directed to an end; industrial activity; toil; employment.' Webster's Dictionary.

"The following definition expresses the general meaning of 'labor':

" 'Work done by a human being or an animal; exertion of body or mind, or both, for the accomplishment of an end; effort made to attain useful results, in distinction from exercise for the sake of recreation or amusement.'

"When used as a verb:

" 'To make a physical or mental effort to accomplish some end; exert the powers of body or mind for the attainment of some result.' Century Dict.

"When taken in their ordinary sense, the words of the statute are sufficiently comprehensive to include employees who work with head or hand, or with both. Indeed, it is impracticable to attempt a separation on that basis; for the head and hand must work together. It is essential that servants in modern industrial plants shall have skill as well as muscle. In this age it is necessary in many industrial plants to employ machinists, mechanics, chemists, draftsmen, engineers, accountants, bookkeepers, stenographers, shipping clerks etc. The statute is broad enough to include all of them. The Legislature has attempted no classification of employees, and we perceive no reason why the courts should do so."

It has been held by the courts that acting, dancing or singing on the stage of a theatre is work according to the ordinary signification of the term. (Commonwealth v. Griffith, 204 Mass. 18, 90 N. E. 394, 25 L. R. A. (n. s.) 957, 134 Am. St. Rep. 645; State v. Rose, supra.)

It may be argued that the doctrine of "noscitur a sociis" or the rule of "ejusdem generis" applies and, therefore, that the employees contemplated by the first part of section 2 must be of the same class or kind as those specifically enumerated in the second part thereof. But, as we have already pointed out, the first part of section 2 relates to work of one character and the second part of section 2 relates to work of another and different character. The services of janitors and custodians would hardly be required in the construction of a public highway, while those of surveyors, foremen and timekeepers may be quite essential. The services of janitors, custodians, and firemen may be altogether unnecessary in the construction of a public building, while those of architects, foremen and timekeepers could not well be dispensed with.

The doctrine of "noscitur a sociis" in construing statutes means that general and specific words, capable of analogous meaning, when associated together, take color from each other, so that the general words are restricted to a sense analogous to the less general. (Ex parte Amos, 112 South. 289; 59 C. J. 979; Words and Phrases, First, Second, Third and Fourth Series.)

The rule of "ejusdem generis," as applied to statutory construction, usually means that where general words follow the designation of particular classes of persons or things, the general words will ordinarily embrace only persons or things of the same general nature or class as those so designated. (Thaanum v. Bynum Irrigation District, 72 Mont. 221; 59 C. J. 981; Words and Phrases, First, Second, Third and Fourth Series.)

The doctrine of "ejusdem generis" is only a rule of construction to be applied as an aid in ascertaining the legislative intent, and does not control where it clearly appears from the statute as a whole that no limitation upon the general words used was intended; nor does it apply where the specific words of a statute signify subjects greatly different from one another; nor where the specific words embrace all objects of their class, so that the general words must bear a different meaning from the specific words or be meaningless. (State v. Eckhardt, 232 Mo. 49, 133 S. W. 321; Crabb v. Board of Dental Examiners, 235 Pac. 829; 59 C. J. 982.)

In view of the language of the statute and its arrangement it is clear the doctrine has no application.

From all that is said we conclude that foremen and timekeepers employed by the State Highway Commission or by contractors in the construction of public highways are within the scope of Section 2 of Chapter 116, Laws of 1929.