

Opinion No. 588**Labor—Eight Hour Law—Restaurants—Retail Stores.**

HELD: A restaurant where no merchandise is sold cannot be classified as a store. But where a restaurant engages in the sale of merchandise it becomes a store and is subject to the regulations and limitations of hours of labor in the Eight Hour Day Law.

August 10, 1934.

You inquire, first: "Can a restaurant

doing an ordinary restaurant business be classified as a retail store?"

A store is defined in Webster's dictionary as "any place where goods are kept for sale, whether by wholesale or retail." A restaurant where cigars are sold only as an incident to the business is not a store. (*Dekenham v. Short*, 199 S. W. 1147.) Therefore a restaurant where no merchandise is sold can not be classified as a store.

You inquire, second: "Can a restaurant doing an ordinary restaurant business be classified as a retail store when it is retailing any goods, wares, and merchandise in addition to, or other than, dispensing food to the public, as for instance selling cigars, tobacco, cigarettes, fishing tackle, etc?"

The selling of goods other than meals changes somewhat the character of the business and it would seem that such a place becomes a place where goods are sold at retail and, therefore, a store. A restaurant united with a bakery has been held to be a store. (*Richards v. Washington F. & M. Ins. Co.*, 27 N. S. 586.) A place where meals are cooked for customers and where oysters, cigars and lager beer are sold has been held to be a store. (*Commonwealth v. Whalen*, 131 Mass. 419.) A saloon has been held to be a store. (*Kelly v. Theodore Hamm Brewing Co.*, 168 N. W. 131.)

I, therefore, believe that when a restaurant engages in the sale of merchandise it becomes a store subject to the regulations as to limitations of hours of labor contained in Chapter 8 of the Laws of the Extraordinary Session of the Twenty-third Legislative Assembly.