

Opinion No. 179.**Labor—Eight Hour Day—Retail Stores—Emergency.**

HELD: The retail store eight hour day law makes no provision for exceptions in cases of emergency.

September 26, 1935.

Mr. A. P. Bruce
Commissioner of Agriculture
The Capitol

You have submitted the following:

"In the case of a clerk, warehouseman or deliveryman working for a retail or wholesale merchant, where some peculiar condition of said business requires that said clerk, warehouseman, deliveryman or other employee occasionally works more than the stipulated eight hours per day, and that said retail or wholesale merchant pays said employee for all overtime so worked in addition to said employee's regular salary or wages, and where said overtime working is not habitual but is more in the nature of an emergency: Does this constitute a violation of the eight hour law for employees of retail and wholesale stores?

"Does the proprietor or owner of a business, or a partner in a business come within the scope of said eight hour store law?

"The foregoing questions, of course, apply to towns of 2500 or more population."

Chapter 8, Laws 1933-34, Extraordinary Session, being the act providing for eight hours maximum employment of the persons mentioned in your request, does not provide for any exceptions in cases of emergency. In the absence of such provision we are forced to conclude that in all cases where the persons named in the act are employed for more than eight hours a day the law is violated. No

facts constituting an emergency are stated in your request, but in the event the overtime employment occurs in a grave emergency, for example, in case of a fire requiring the immediate removal of merchandise in order to prevent its destruction, we do not believe a prosecuting officer would be criticized for failing to prosecute such unintentional or unavoidable violation of the law. Nor do we believe that, in the practical operation of the Act, a prosecution would be demanded in such a case. On the other hand, it is possible that in not making an exception in case of an emergency, the legislature may have felt that, since such emergency, in anticipation of all conditions and circumstances, could not be defined with exactness, there might be those who would try to take advantage of it and defeat the purpose of the Act. We must, however, accept it as the legislature left it and cannot read into it any exceptions.

The word "employed" as used in Section 1 of the Act, in my opinion, having in view the object and purpose of the Act, is used in the sense of importing the relation of employer and employee, and since proprietors, owners and partners in business do not come within such relation, the law does not apply to them.