

Opinion No. 173.

Child Labor Law—Employment of Children—Certificates, Employment.

Held: No child under the age of sixteen years may be employed during those hours of the school term when schools are actually in session, except that a child over the age of fourteen years may be employed during the hours of the school term when schools are actually in session provided such child obtains an age and schooling certificate as provided in Section 1136, Revised Codes of Montana, 1935, showing such child has successfully completed the eighth grade, or that the wages of such child are necessary for the support of the family, except that no child may be employed at any time in those occupations prohibited by Section 3095, Revised Codes of Montana, 1935. No child under the age of twenty-one years may be employed as a bartender, waiter, or waitress, whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail.

February 4, 1944.

Mr. Henry A. Yaeger
Inspector in Charge
Division of Labor
State Capitol
Helena, Montana

Dear Mr. Yaeger:

You have called my attention to the provisions of Section 1136, Revised Codes of Montana, 1935, and to Chapter 114, Laws of 1941, and request an opinion on the following questions:

"1. May a child of any age under sixteen years be employed during any hours before and after school hours, and on Saturday and Sunday and all periods of vacations, at any occupa-

tion or within any industry, except those prohibited by Section 3095, Revised Codes of Montana, 1935?"

"2. May a child under the age of twenty-one years regardless of whether or not he has completed the eighth grade, or his wages are necessary to the support of his family, be employed as outlined in Chapter 114, Laws of 1941?"

Section 1136, *supra*, is a part of Chapter 106, Political Code, relating to compulsory education. Such laws are designed principally for the purpose of promoting the general welfare by protecting minors from injury by overwork and by facilitating their attendance at school. Many of the states of the union have such laws and the constitutionality has been upheld by the greater weight of authority. See note in 12 A. L. R. 1216, 21 A. L. R. 1437.

Section 3095, Revised Codes of Montana, 1935, is a part of Chapter 265, Political Code, relating to child labor and is a general statute dealing with the employment of children generally, while Section 1136 is a special statute dealing with the employment of children during the period when schools are in session. Both, however, have for their object the same purpose—protection of the child.

The provisions of Section 1136, *supra*, as applicable to a determination of the questions here considered, are as follows:

"No child under sixteen years of age shall be employed or be in the employment of any person, firm, company, or corporation during the school term and while the public schools are in session . . . unless such child shall present to such persons, firm, company, or corporation an age and schooling certificate . . . provided, also, that in case the wages of any child over fourteen years of age are necessary to the support of the family . . . the city superintendent of schools . . . may . . . issue a certificate permitting the employment of such child . . . provided, however, that **nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session.**" (Emphasis mine.)

The statute seems to be confusing in the use of the words "term" and "session." It prohibits the employment

of any child under the age of sixteen years, "during the school term, and while the public schools are in session," but excepts from such prohibition the employment of such child, "during the time school is not **actually** in session."

In construing a statute, its words and phrases must be given their plain and ordinary meaning. (*State v. Bowker*, 63 Mont. 1, 265 Pac. 961.) However, a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. (*U. S. v. One Automobile*, 237 F. 891.) Our Supreme Court has expressed the rule that courts construe statutes and ascertain the intention of the legislative assembly by considering every part of the act, the subject-matter, object and intent. (*Daniels v. Andes Ins. Co.*, 2 Mont. 78.)

When the foregoing rules of construction are applied to the statute here under consideration, and keeping in mind the purpose of such legislation, it appears clear that the legislature determined that to permit a child of the designated ages to work during the time schools were in session would interfere with its school work and tend to the interruption of school attendance. The legislature recognized that there might be exceptions and so provided therefor by permitting employment of those children who had reached the age of fourteen years and had successfully completed the eighth grade, or those whose wages were necessary for the support of the family even though in such case the child had not completed the eighth grade.

Our Supreme Court in the case of *In re Wilson's Estate*, 102 Mont. 178, 56 Pac. (2d) 733, adopted the rule of construction expressed in 25 R. C. L. p. 1013, as follows:

"The general design and purpose of the law is to be kept in view and the statute given a fair and reasonable construction with a view to effecting its purpose and object, even if it be necessary in doing so, to restrict somewhat the force of subsidiary provisions that otherwise would conflict the paramount intent."

While this statute is not as clear as might be, yet when the general purpose and design of such legislation is considered and applying the rules of construction adopted by our courts there may be but one conclusion, namely, that the restriction against employment of

children under the age of sixteen years applies only to the hours of the day, during the school term when schools are actually in session. It does not apply to the hours before and after school, or to Saturdays, Sundays and holidays, or vacation periods, when schools are not in session.

Interpretation of similar statutes was before the Supreme Courts of Minnesota and New Mexico, in the cases of *Harvey v. Ruff, et al.*, 164 Minn. 31, 204 N. W. 634; *Nelson v. Hill*, 30 N. M. 288, 232 Pac. 526, 527. In the former case, the court said:

"Obviously the statute required the employment certificate only in cases where the minor is employed during school hours. It does not mean that he may not be employed during the school term. The statute has no application to the employment of minors on Saturdays, holidays or after school hours."

The provisions of Chapter 114, Laws of 1941, are clear and unequivocal and therefore need no interpretation. It provides:

"No person under the age of twenty-one years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail."

It is therefore my opinion:

1. No child, under the age of sixteen years, may be employed during those hours of the school term when schools are actually in session, except that a child over the age of fourteen years may be employed during the hours of the school term when schools are actually in session, provided such child obtains an age and schooling certificate as provided in Section 1136, Revised Codes of Montana, 1935, showing such child has successfully completed the eighth grade, or that the wages of such child are necessary for the support of the family, except that no child may be employed at any time in those occupations prohibited by Section 3095, Revised Codes of Montana, 1935.

2. No child, under the age of twenty-one years, may be employed as a bartender, waiter, or waitress, whose duty it is to serve customers

purchasing liquors, beer or wines in
any establishment which sells liquors,
beer or wines at retail.

Sincerely yours,
R. V. BOTTOMLY
Attorney General