

I have before me the original certificate of the governing body, signed by its mayor and attested by its clerk under the corporate seal of the municipality certifying to the Civil Service Commission the fact that the civil service law was adopted, giving the vote as 1,155 for and 243 against the proposition, the election having been held on November 2, 1948. R. S. 11:20-7 provides with respect to the election that if the result of the same is favorable to the adoption of civil service law, such result shall be certified to the commission by the governing body of the municipality. The certificate which I have before me and which I have referred to complies with the requirements of the statute and, in my opinion, your commission is bound thereby.

I am returning herewith the papers which you left with me including the certification above referred to.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

Encs. TB:B

May 11, 1949.

HON. HARRY C. HARPER,
Commissioner of Labor and Industry,
State House,
Trenton 7, N. J.

FORMAL OPINION—1949. No. 48.

DEAR COMMISSIONER:

Re: Employment of Minors in Connection With Power Driven Hoisting Apparatus.

Your letter of recent date requesting an opinion as to whether R. S. 34:2-21.17 prohibits the employment of minors under 18 years of age in work which involves riding on a freight elevator, has been received.

While Section 17 of R. S. 34:2-21 prohibits minors under 16 years of age from being employed, permitted or suffered to work in, about, or in connection with power driven machinery, it further delineates specific occupations at which minors under 18 years of age may not be employed. Among these is the following, "Operation or repair of elevators or other hoisting apparatus." Thus the legislative intent is patently indicated to exclude from the general provision of the statute any reference to elevators by its specific inclusion of them in the enumerated prohibited occupations.

The language employed in the statute clearly circumscribes the prohibition contained therein to "operation and repair of elevators." Hence it is my opinion that

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minors under 18 years of age, who otherwise conform to the requirements of the Child Labor Law, may be employed in work which requires riding on a freight elevator when said elevator is manned or operated by a competent adult.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: GRACE J. FORD,
Assistant Deputy Attorney General.

May 13, 1949.

HONORABLE HARRY C. HARPER, *Commissioner,*
Department of Labor and Industry,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 49.

DEAR COMMISSIONER HARPER:

This is to acknowledge the receipt of the copy of letter transmitted to you by the Director of the Division of Employment Security requesting an opinion as to the authority and method to be pursued by the agency in securing reimbursement of disability benefits erroneously paid. The erroneous payment of benefits was occasioned by the employer improperly advising the agency that the claimant was covered under the State Fund when in fact he was entitled to benefits under the Insured Private Plan of the employer. The agency asks whether it should proceed to collect from the claimant or the insurer or against both, and, if so, in what order.

In the absence of any proof of a false statement or representation having been made to obtain his benefits, the Temporary Disability Benefits Law does not specifically provide for repayment of benefits by a claimant whether erroneously paid or collected. Section 18 thereof, authorizes the payment of disability benefits out of the Disability Benefits Fund to be made in accordance with and subject to the laws and regulations pertaining to the payment of unemployment benefits. Subsection 16 (d) of the Unemployment Compensation Law, in part, provides: "When it is determined by the deputy that any person, by reason of the nondisclosure or misrepresentation by him or by another, of the material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits * * *."

The New Jersey Supreme Court in the case of *Tube Reducing Corporation vs. U. C. C., et als.*, 62 A. (2d) 473, in its opinion, in part, held as follows:

"The obligation of repayment of benefits erroneously paid to one disqualified under the statute does not depend upon moral or conscious fraud in the nondisclosure or misrepresentation. The principle of the cases dealing with life insurance policies, e. g. *Kozlowski vs. Pavonia Life Insurance Co.*, 116 N. J. L. 295 (Sup. Ct., 1936), has no application here. It does not matter whether there be concealment or mere silence. That such was the legislative