DECEMBER 1, 1952

HON. PERCY A. MILLER, JR.,
Commissioner of Labor and Industry,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1952. No. 30.

Receipt is acknowledged of your communication regarding the application of certain labor laws concerning females employed in a cafeteria or restaurant connected with manufacturing establishments.

The two specific questions that you put to this office are:

1. Do the provisions of R. S. 34:2–24 apply to females employed in cafeterias or restaurants connected with manufacturing establishments whether operated by the manufacturer or a concessionaire?
2. Do the provisions of R. S. 34:2–28 apply to females employed in an industrial cafeteria or restaurant in the following specific situations:

   a. where the eating facility is located in a manufacturing area;
   b. where it adjoins but is physically separated from a manufacturing area;
   c. where it is not adjacent to such an area but is located within premises which include such an area?

This office is of the opinion the answer to question number 1 is, yes. With regard to question number 2, the answer is, yes, if the eating facility is operated by the manufacturer as an incidental part of his business. However, if the eating facility is not operated by the manufacturer and is a separate enterprise, in our opinion, the statute does not apply.

Both section 24 and section 28 of chapter 2 of Title 34 relate to the same matter, namely, the working hours of female labor, and are therefore to be read together in order to ascertain the intent of the Legislature.

A scrutiny of the terms of these two sections indicates that R. S. 34:2–24 relates to the number of working hours per day and per week and number of days per week, of females in certain establishments and that R. S. 34:2–28 relates to the hours in the morning and the hours in the evening between which females in certain establishments shall be employed.

The pertinent part of R. S. 34:2–24 provides that:

> "No female shall be employed or permitted to work in any manufacturing or mercantile establishment, bakery, laundry or restaurant more than ten hours in any one day or more than six days, or fifty-four hours in any one week."

The pertinent part of R. S. 34:2–28 provides that:

> ". . . no female shall be employed or permitted to work in any manufacturing establishment, bakery, or laundry in this State before seven o'clock in the morning or after twelve o'clock in the evening of any day . . ."

The case of *Toohey* vs. *Abromowitz Department Store, Inc.*, 124 N. J. L. 209, 11 A. 2d 297, holds that R. S. 34:2–24 expressly forbids the employment of females in the enumerated occupations for more than ten hours in any one day or more than six days in any one week or more than fifty-four hours in any one week. It seems clear that R. S. 34:2–28 expressly prohibits the employment of females in the enumerated occupations before seven o'clock in the morning or after twelve o'clock in the evening.

Accordingly, where a female is employed in any of the enumerated establishments or occupations, the provisions of the statute must apply.

Of the enumerated establishments or occupations we are only concerned here with "manufacturing establishments" and "restaurants." These terms, incidentally, are defined in R. S. 34:2–1 as follows:

> "'Manufacturing establishment' means any place where articles for use or consumption are regularly made, and 'restaurant' means any place where meals or refreshments, both food and drink, are served to the public."

The problem is, however, whether the female is employed in a "restaurant" or "manufacturing establishment" within the meaning of the statute.

The legislative intention must be regarded as reasonable, for a beneficial purpose, to promote the welfare of a certain class of labor, embracing and including all females. The object of R. S. 34:2–24 is to limit their number of working hours and days in, among other establishments, manufacturing establishments and restaurants. The object of R. S. 34:2–28 is to prohibit them from working between certain hours in, among other establishments, manufacturing establishments. It is noted that R. S. 34:2–28 does not enumerate restaurants. Therefore, females employed in restaurants are exempted from the prohibition contained in R. S. 34:2–28.

It seems, therefore, that if females are employed in a restaurant, and nowhere else, R. S. 34:2–24 is applicable and R. S. 34:2–28 is not applicable. Basically, their kind of work is the same by whomsoever the restaurant is operated, whether by the manufacturer or a concessionaire, wheresoever the restaurant is located, either in a manufacturing establishment, a store, a bus station, or in a separate room to itself, or elsewhere for the service of meals. See *State* vs. *Seithel*, 201 S. C. 1, 21 S. E. 2d 195. It is primarily the welfare of female labor that we are here concerned with—not the welfare of the operator of the restaurant. Ordinarily, of course, a restaurant is thought of as a place where food and drink are served to the public generally, but is not an operator who serves to selected portions of the public, such as the workers and employees of a manufacturing establishment, and not to the public generally, none the less, in the restaurant business. A restaurant is a place where refreshments can be had to be consumed on the premises. It is an establishment for the sale of refreshments, both food and drink, or a place where meals are served. See in re Bowers, D. C., Cal., 33 F. Supp. 965, 966. We do not feel that a restaurant operator, by serving only selected portions of the public, can by so doing, immunize himself from the regulatory provisions of the labor laws. As stated by Mr. Justice Bodine in the *Toohey* vs. *Abromowitz* case (supra):

> "Public policy requires that there should be control over the hours of work in certain occupations. The public interest is not served by the physical injury resulting from labor too long continued."

However, we must take into consideration that when the statutes under examination were enacted, restaurants and manufacturing establishments were undoubtedly thought of as being separate and distinct enterprises, independent from one another. With the advent of modern industrial practices in manufacturing establishments, there has come into being the anomalous situation of restaurants and cafeterias connected with the manufacturing establishments. If these eating facilities are operated by the manufacturer and are not conducted as enterprises separate and independent of the other activities of the manufacturer, but are conducted as incidental but necessary undertakings of the business, then are not the female employees working in these eating facilities just as much employees of the manufacturer as female employees of the manufacturer working in the stockroom and elsewhere in the manufacturing establishment? If so, both R. S. 34:2–24 and R. S. 34:2–28 would be applicable, by virtue of the fact that both statutes cover female employees of manufacturing establishments.

In our opinion, the answer to this question is, yes. On the other hand, if these eating facilities are not operated by the manufacturer, or are operated as enterprises separate and independent of the activities of the manufacturer, the female employees would not be employees of the manufacturing establishment, and hence R. S. 34:2–28 would not be applicable.

The foregoing indicates that legislation has not kept pace with industrial practices and leads us to the conclusion that the matter should be clarified by amendatory legislation.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: FREDERIC G. WEBER,
Deputy Attorney General.

SEPTEMBER 30, 1952.

DR. LESTER H. CLEE, *President,*
Civil Service Commission,
State House, Trenton, N. J.

FORMAL OPINION—1952. No. 31.

DEAR DOCTOR CLEE:

You have asked whether or not R. S. 2A:11–11 changes the law as contained in R. S. 2:16–24.1 relative to removal of a stenographic reporter by the appointing justice.

As we understand the amendment the law now provides that the Supreme Court may remove any reporter so appointed at any time for cause and appoint another in his place.