

AUGUST 4, 1953.

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

FORMAL OPINION—1953. No. 32.

MY DEAR COMMISSIONER:

We have for attention your request for re-consideration of Formal Opinion No. 48, 1949, heretofore rendered. You will recall that Formal Opinion No. 48, 1949, was rendered pursuant to a situation which arose in Kresge-Newark, Inc. In that instance the company was advised that "minors under 18 years of age are not permitted to load, operate, or transport merchandise in a passenger or freight elevator which includes any power driven hoisting or lowering mechanism (Letter dated December 3, 1948 to Kresge-Newark, Inc.). Thereafter, this office was called upon to render its interpretation of R. S. 34:2-21.17. Since the opinion is short we include it herewith:

"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 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".

The immediate problem posed by you deals with the meaning of the term "in, about or in connection with" used by the Legislature in the prohibition contained in R. S. 34:2-21.17. Our first resort is to the literal meaning of the words employed; we find all lexicographers in unison in defining the words "in", "about" and "in connection with" as "in the immediate neighborhood", "in contiguity or proximity of", "near, as to place", etc.

However, we then ask, "in, about or in connection" with what? Indubitably the answer is found in the statute ". . . in, about or in connection with . . . *the operation or repair of elevators or other hoisting apparatus*" (Italics ours).

The following examples set forth in your communication as the actual hazards are extrinsic to the prohibition contained in the statute:

1. Loading or unloading goods on elevators, dumb-waiters and various types of hoists so long as the actual operation is done elsewhere. Some of these are carefully closed-in elevators but there are many crude open ones and many swinging hoists. We have had numerous persons injured while standing under or bending over, under down-coming elevators and dumb-waiters which they were waiting to load and which someone else was operating.

2. Minors as young as 12 employed in tree work being permitted to work directly in areas where sawed off limbs or tree tops are being lowered by a hand hoist; 14-year-old boys permitted to ride and work up on swinging scaffolds so long as they do not raise or lower it; 16-year-old farm boys working at the very hazardous task of hooking bales of hay which are being carried to the storage areas of the barn by hoists and dumped there.

3. Stevedores and laborers in the areas of cranes loading and unloading freight boats as well as working in the vicinity of all types of cranes, derricks or rigs.

4. Work on high dump truck so long as the dump is not operated by the minor, although he may be working on the dump itself or in the area where the materials are being unloaded.

It is axiomatic that where, as in the instant case, the law is plain, unambiguous and within the legislative power, it is self-declaratory and nothing is left for interpretation. The remedy for a law that does not encompass the exigencies or meet specific situations is not to be found in a strained interpretation but rather in amendment.

We must conclude therefore that the interpretation contained in Formal Opinion No. 48, 1949, is, upon review, reiterated.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: GRACE J. FORD,
Ass't Deputy Attorney General.

GJF:mh

AUGUST 13, 1953.

HUDSON COUNTY BOARD OF TAXATION,
2857 Hudson Boulevard,
Jersey City 6, New Jersey.
Attention: Michael Donovan, *Secretary.*

FORMAL OPINION—1953. No. 33.

GENTLEMEN:

I am in receipt of your request for my opinion on the following:

"Under the provisions of 54:3-21 appeals by taxpayers and taxing districts, etc., must be filed on or before August 15th with the County Board of Taxation.

August 15th, 1953 is a Saturday and all county offices have been closed during the months of July and August by statutory enactment, I believe. Subsequent day, August 16th is a Sunday, and therefore, the offices will not be open for business.

Would you kindly advise this Board when is the last day it should accept petitions of appeal."