AUGUST 21, 1959

HONORABLE GEORGE S. PFAUS
Acting Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION 1959—No. 18

DEAR ACTING COMMISSIONER PFAUS:

In your letter of June 5, 1959 you ask whether the word "day," as used in *R.S.* 34:2-24, means any twenty-four hour period or only that period of time passing between two successive midnights (the calendar day). The statute in question limits the period of time during which a female may work at certain occupations. It reads as follows:

> "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." (Emphasis added)

The specific problem posed is whether a female who works from 3:30 to 11:55 p.m. may, at her own request, be permitted to change shifts in the middle of the week and begin her new shift at 7:00 a.m. (having worked until 11:55 the immediately preceding evening).

In our opinion the word "day" means any twenty-four hour period. Your specific question, therefore, must be answered in the negative. To hold that "day" means calendar day would permit employment of females for a working day of more than 10 hours in a twenty-four hour period (hours before and after midnight). This certainly was not the intent of our Legislature in enacting the statute. In an informal opinion addressed to the Commissioner of Labor, dated December 14, 1916, Attorney General Westcott stated with regard to the statute in question:

> "* * * that the word 'day' as it appears in this act may be construed to mean working day; that the purpose of the statute was to prohibit a day's work of greater length than ten hours; that it is entirely immaterial whether this day is all included within one calendar day or whether it covers part of two calendar days, so long as it constitutes but one working day. This construction of the statute will, in my judgment, be in accord with the undoubted purpose of the act."

The reasoning underlying this construction remains valid and is expressly reaffirmed.

Justification for limiting the hours of labor for women include "her physical organization, her maternal function, the rearing and education of women and the maintenance of the home." 31 *Am. Jur.*, Labor, §787, p. 968 (1958). In *Toohey* v. *Abramowitz Dep't. Store, Inc.*, 124 N.J.L. 209 (Sup. Ct. 1940), a case involving *R.S.* 34:2-24, Justice Bodine stated, at page 210:

> "The public interest is not served by the physical injury resulting from labor too long continued."

The court concluded in *Toohey* that "six days, or fifty-four hours in any one week" means that a woman is prohibited from working *either* (a) seven successive days or

(b) more than fifty-four hours in a seven-day period. As this case demonstrates, the statute in question is aimed at preventing the employment of females for oppressive hours. A construction that will further this purpose is preferred to one that permits avoidance of the intended prohibition. *N.J.S.A.* 34:2-28 (prohibiting certain employment of women before 7:00 a.m. and after 12:00 midnight) provides additional support for the view that "day" means any twenty-four hour period without regard to midnight as a terminal point. See also, *Opinion of the Attorney General,* Memorandum—P-24 (August 8, 1956), wherein it was held that the word "week," contained in *R.S.* 34:2-24, meant any period of seven consecutive days.

The pertinent New Jersey cases defining the word "day" involve statutes obviously referring to the calendar day. *Walinski* v. *Mayor & Council, Gloucester City,* 25 N.J. Super. 122 (Chan. Div. 1953) and *In re Byrne,* 19 N.J. Super. 313 (Law Div. 1952). *In re Byrne* concerned the construction of a statute limiting the time for filing nominating petitions, and the court construed "day" to mean the time between consecutive midnights. *Walinski* involved construction of a statute prohibiting the sale of liquor on Sunday, and it was held that Sunday was the twenty-four hour period of time following Saturday midnight. These cases are not binding here.

Accordingly, we hold that "day," as used in *R.S.* 34:2-24, means any twenty-four hour period. The violation caused by the change of shifts discussed earlier in this opinion can be avoided by making the change effective following the individual's day of rest.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: STEPHEN F. LICHTENSTEIN
Deputy Attorney General

AUGUST 26, 1959

MR. WILLIAM MACPHAIL
Superintendent of Elections
595 Newark Avenue
Jersey City, New Jersey

FORMAL OPINION 1959—No. 19

DEAR MR. MACPHAIL:

You have requested an opinion whether former residents of Puerto Rico who have appeared for the purpose of being registered to vote and who are unable to speak or read the English language are entitled to register and vote.

The qualifications for voting in New Jersey are set out in Art. 2 N.J. Const. (1947). Paragraph 3 sets out the qualifications of citizenship of the United States, attainment of 21 years of age, and residence in the State for 6 months and in the county for 60 days. Paragraph 6 denies suffrage to idiots and insane persons. Paragraph 7 denies suffrage to persons convicted of crimes designated by the Legislature. (R.S. 19:4-1 enumerates the crimes which disqualify.)

While you have made reference to this problem as it applies to Puerto Ricans, this opinion applies as well to all citizens who cannot read or write.