

"Section 3 confers upon the Board in addition to its duties in respect to the Minimum Wage Law, the power to administer provisions of the Act relating to *industrial accident prevention*. It is authorized to adopt rules and regulations after a public hearing governing minimum standards of safety requirements which the Board considers necessary in order to protect or safeguard the lives or health of *industrial employees*."

"*Industrial employers* are required by this Act to furnish a reasonably safe place for employees and to use safety devices and safeguards which are reasonably safe and adequate for the protection of employees."

"* * * *industrial accidents* in the District of Columbia have been increasing in appalling numbers * * * The majority of the total accidents happened in *construction work*. It is believed that most of these accidents are due to lack of program supervision and control over *industrial projects* and the lack of minimum safety requirements necessary to safeguard the health and life of *industrial employees* * * *" (Emphasis added.)

Similar statements are made in House of Representatives Report No. 918, 77th Congress, 1st Session (1941).

Because of the language of the statute and the statements in the Congressional Reports, this office is constrained to take the position that the authority of the Board to promulgate and enforce safety standards and regulations is limited to industrial employment or places where industrial employment is carried on. This conclusion reaffirms the reasoning and basic position taken in the Corporation Counsel's Opinion dated June 24, 1949, (CCO: 3.M3.1—Window Cleaning Operations).

Having established the proposition that the Board's jurisdiction is limited to industrial employment, the next question is whether hotel workers are engaged in industrial employment.

The term "industrial employment" has never been interpreted by the local courts. Decisions from other jurisdictions can be found to the effect that an "industrial establishment" is a place of business that employs much labor and capital and is a distinct branch of trade. E.g., *State ex rel Kansas City Power & Light Co. v. Smith*, 111 S. W. 2d 513, 515 (Mo. 1938). A hospital has been held not to be an "industrial enterprise". *Mayor and City Council of Baltimore v. Trunk*, 190 A. 756, 759 (Md. 1937). See also *Brooklyn Hebrew Home and Hospital for the Aged v. Ottley*, 205 N.Y.S. 2d 397, 400 (1960). A bowling alley was held not to be an "industrial plant" for purposes of violation of a zoning decree. *Town of Oyster Bay v. Forte*, 219, N.Y.S. 2d 456, 460 (1961). It has been held that a hotel is not a "factory building" or a "mercantile establishment" for purposes of applying a regulation of an Industrial Board. *Mortimer v. Natapow*, 14 N.Y.S. 2d 971 (1939).

This office has rendered two opinions construing the term "industrial employment." In the first of these, it was concluded that employees of the Washington Terminal Company came within the Board's jurisdiction. (CCO: 3.M3.1—Washington Terminal Company, dated February 17, 1945.) In the second opinion (CCO: 3.M3.1—Window Cleaning Operations, *supra*.) it was stated that the Board's jurisdiction did not extend to the operation of an apartment building or an office building because such operations could not be construed as involving "industrial employment."

Based on the foregoing, it is not believed that the term "industrial employment" could under any circumstances be construed to include the employment of hotel workers. Accordingly, it is my opinion that the above-cited regulations of the Minimum Wage and Industrial Safety Board are not applicable to the Hotel Washington.

The broad question posed in the request for an opinion concerned the limits of authority and jurisdiction of the Minimum Wage and Industrial Safety Board and the Department of Licenses and Inspections with respect to permanent features of a building or structure. It follows from the foregoing discussion that the jurisdiction of the Minimum Wage and Industrial Safety Board is not dependent upon the nature of the building or structure or its appurtenances, but rather on what goes on inside of the building or structure. If the activity can be considered industrial employment, then the Board is authorized under its statute to fix reasonable safety standards and to promulgate rules and regulations after a public hearing. Secs. 36-433, 36-434, D.C. Code, 1961 ed. In places where industrial employment is carried on, such rules and regulations would be fully applicable and enforceable even though the Building Code may specify less stringent requirements.