

OFFICIAL OPINION NO. 8

April 21, 1955

Mr. David M. Harms,
Commissioner of Labor
Department of Labor
Room 225, State House
Indianapolis 4, Indiana

Dear Mr. Harms:

Your letter requesting my Official Opinion reads, in part, as follows:

"1. Is it permissible according to code to run a power elevator operated by direct hand operated rope, cable or rod whose contract speed is one hundred (100) feet or less per minute?

"2. Must a permit be obtained from the Elevator Safety Subdivision by individual companies to make installations or alterations for state institutions?"

Acts of 1951, Ch. 232, Sec. 3, as found in Burns' Indiana Statutes (1950 Repl., 1953 Supp.), Section 20-1203, provides that the Elevator Safety Subdivision of the Division of Labor shall have the power and it shall be its duty to promulgate rules and regulations for safety in the operation of elevators and moving stairways; such rules and regulations may not be more stringent than those provided for in the American Standard Safety Code for Elevators.

Pursuant to the above authority, the Elevator Safety Subdivision of the Division of Labor promulgated Rule No. 1 concerning safety rules and regulations for elevators, dumb waiters and moving stairways. Section 2b of said Rule provides in effect that the American Standard Safety Code for Elevators, Fourth Revision 1942, shall be considered a portion of this section as it applies to new installations. Rule 224a of the American Standard Safety Code for Elevators, Fourth Revision 1942, provides as follows:

"No power elevator having a contract speed in excess of one hundred (100) feet per minute shall be operated by a direct hand-operated rope, cable, or rod."

OPINION 8

The quoted provision from the American Standard Safety Code for Elevators, Fourth Revision 1942, has been incorporated into Rule No. 1 of your Elevator Safety Subdivision. Pursuant thereto, it is my opinion that any power elevator which has a contract speed in excess of one hundred (100) feet per minute may not be operated by a direct hand-operated rope, cable, or rod. However, in the language of your question No. 1, it is permissible under the code of your department to run a power elevator operated by direct hand-operated rope, cable or rod whose contract speed is one hundred (100) feet or less per minute.

Your second question involves the interpretation of Sections 8 and 9 of the Acts of 1951, Ch. 232, *supra*. This question presents considerable difficulty in view of 1953 O. A. G., page 103, No. 22 and 1954 O. A. G., page 248, No. 68. Both cited opinions support the view that the state is not bound by police power regulations unless the statute involved specifically includes the state within the scope of the regulations. The 1953 opinion above cited referred to the following text material in 49 Am. Jur., States, Territories and Dependencies, § 14 as follows:

“Moreover, independently of any doctrine founded on the notion of prerogative, the same construction ought to prevail founded upon legislative intent. The presumption of a legislative intent to exclude the state from the operation of a statute is based on the fact that laws are ordinarily made for the government of citizens and not of the state, and the probability that if the legislative power intended to divest the sovereign power of any right, privilege, title, or interest, it would say so in express words. Where an act contains no words to express such an intent, it will be presumed that the intent does not exist. Any doubt as to whether the state is intended to be included is to be resolved in favor of the state. *If, however, a statute is enacted for the public good, the state is included therein, although not expressly named, and the fact that the subject matter of a statute is one in which the state is the chief party in interest may indicate an intention to bind the state.*”
(Our emphasis)

1955 O. A. G.

Section 8 of the Act above cited provides in effect that the plans and specifications of any elevator, dumb waiter or moving stairway which is relocated or altered shall be submitted to the Division together with application for an alteration or relocation permit. Section 9 of said Act provides that a construction permit shall be issued by the Division for any new elevator, dumbwaiter, or moving stairway before the installation thereof is started. Section 3 of said Act clearly and emphatically indicates that this Act is one designed to provide for safety of life, limb, and property. This statute is, in my opinion, one which may apply to a person, firm or corporation which installs a new elevator or alters or relocates an elevator in a state institution. While I am in accord with 1953 O. A. G., page 103, No. 22, *supra*, which indicates that your Division has no authority to charge state institutions a fee for inspecting elevators, nevertheless I am of the opinion that a distinction may be made with regard to requiring a private person to obtain a permit for installing, altering or relocating an elevator in a state institution. The statute was designed to protect human life and limb on elevators, dumb waiters and moving stairways; I am of the opinion that the Legislature did not intend to leave the general public, as well as employees, wholly without protection in state institutions. I conclude, in the terms of your question No. 2, that a permit must be obtained from the Division of Labor by individual elevator companies to make installations, alterations, or relocations of elevators, dumb waiters and moving stairways in state institutions.

OFFICIAL OPINION NO. 9

April 27, 1955

Mr. Curtis E. Rardin
Auditor of State
238 State House
Indianapolis, Indiana

Dear Mr. Rardin:

This is in reply to your letter requesting an Official Opinion as to the following:

“House Enrolled Act No. 535, now Chapter 336, Acts of 1955, provides for the distribution to the cities and