

OFFICIAL OPINION NO. 110

December 1, 1953.

Mrs. Dorothy E. Kirk, Statistician,  
Division of Labor,  
State House,  
Indianapolis, Indiana.

Dear Mrs. Kirk:

I have your letter requesting an official opinion on the following question:

May a factory adopt the use of a canteen service for its employees without providing adequate eating facilities, whereby employees are forced to eat at the machines or in the factory area?

The Acts of 1945, Chapter 334, Section 11, as found in Burns' Indiana Statutes Annotated (1952 Repl.), Section 40-2140 provides in part as follows:

"In addition to such other powers and duties as may be conferred upon him by this act (Sections 40-2130—40-2150) or by any other law, the commissioner of labor is hereby authorized and directed:

"(a) To investigate and adopt rules prescribing what safety devices, safeguards or other means of protection shall be adopted for the prevention of accidents in every employment or place of employment, and to determine what suitable devices, safeguards, or other means of protection for the prevention of industrial accidents or occupational diseases shall be adopted or followed in any or all such employments or places of employment, and to adopt, amend or repeal reasonable rules, applicable to either employers or employees, or both, for the prevention of accidents and the prevention of industrial or occupational diseases; and \* \* \*."

Pursuant to the foregoing the Commissioner of Labor has adopted a rule, 2 Health and Safety Rules, Sec. V, No. 1, which provides that lunch rooms shall be provided for employees, or, in the alternative, locker rooms shall be made available for employees to lunch in, where said employees are employed in

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a plant or factory where processes produce toxic dusts or fumes which can be conveyed to the human system by way of the mouth. Said rule also prohibits said employees from bringing milk, coffee, soft drinks or candy into work room areas, and further provides that the lunch rooms shall be adequately ventilated, lighted and heated during periods of occupancy, and shall be equipped with the number of chairs or tables and/or benches to accommodate the number of employees regularly required to lunch at one time.

In addition to this, 2 Health and Safety Rules, Sec. II, No. 7 provides:

“In workroom areas where processes produce toxic dusts or fumes that can be conveyed to the human system by way of the mouth, the employer shall not allow employees to lunch on their jobs, nor shall milk, coffee or soft drinks be brought to the job. Employees working in contaminated areas shall be required to wash before eating, and the employer shall be required to provide a suitable place for use of the employees for eating purposes.”

When the Commissioner of Labor duly adopts rules, by virtue of legislative authority, such rules, within the respective jurisdiction, have the force and effect of a law of the Legislature, and they may be said to be in force by authority of the State. See: *Blue v. Beach et al.* (1900), 155 Ind. 121, 131, 56 N. E. 89, where the court in following this line of reasoning stated further:

“It is true that such rules and by-laws must be reasonable, and boards of health cannot enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature, and any rule or by-law which is in conflict with the State’s organic law, or antagonistic to the general law of the State, or opposed to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards, would be invalid.”

See also: *Wallace v. Dohner* (1929), 89 Ind. App. 416, 165 N. E. 552.

The preservation of the public health and safety is one of the duties devolving upon the State as a sovereign power. In fact, among all of the objects sought to be secured by governmental laws, none is more important: and an imperative obligation rests upon the State, through its proper instrumentalities to take all necessary steps to promote this object. This duty finds ample support in the police power which is inherent in the State. In the case of *The State v. Gerhardt* (1896), 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313, on page 451 of the opinion, the court said:

“The police power of a State is recognized by the courts to be one of wide sweep. It is exercised by the State in order to promote the health, safety, comfort, morals, and welfare of the public. The right to exercise this power is said to be inherent in the people in every free government. It is not a grant, derived from or under any written constitution. It is not, however, without limitation, and it cannot be invoked so as to invade the fundamental rights of a citizen. As a general proposition, it may be asserted that it is the province of the legislature to decide when the exigency exists for the exercise of this power, but as to what are the subjects which come within it, is evidently a judicial question. \* \* \*”

From the above it can readily be seen that the rule in question is reasonable. It is designed to cover situations, such as steel mills and rubber factories, where toxic dusts and fumes are ever present. The health and safety of employees are endangered by eating food which is contaminated by toxic dusts and fumes.

As a general proposition, the same rules applicable to the construction of a statute apply to the construction of rules and regulations of administrative boards;

*Miller v. United States* (1935), 294 U. S. 435, 55 S. Ct. 440, 97 L. Ed. 977; and

42 Am. Jur., Public Administrative Law, Sec. 101, p. 431;

and, where a statute is free from ambiguity, there is no room for judicial construction by the courts.

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Williams v. City of Michigan City (1934), 100 Ind. App. 136, 192 N. E. 103;

Cain v. Stoley Manufacturing Co. (1933), 97 Ind. App. 235, 186 N. E. 265;

The State of Indiana v. Mutual Life Insurance Company of New York (1910), 175 Ind. 59, 93 N. E. 213, 42 L. R. A. (N. S.) 256.

Rule No. 1 of 2 Health and Safety Rules, *supra*, being susceptible of only one construction, it is my opinion that a factory, where processes produce toxic dusts or fumes, cannot adopt the use of a canteen service for its employees, whereby said employees are forced to eat at the machines or in the factory area, but must provide a lunch room or make available locker rooms, separate from the workroom area which comply with said rule.

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OFFICIAL OPINION NO. 111

December 16, 1953.

Hon. C. Wendell Martin,  
State Senator,  
1356 Consolidated Building,  
Indianapolis 4, Indiana.

Dear Senator Martin:

I have your request for an official opinion which is as follows:

"May I please have an official opinion of your department in regard to the legality of placing advertising matter on parking meter posts in various cities and towns in the State of Indiana.

"The particular signs which I have in question are 6 by 8 inches, made of one-fourth inch masonite, with beveled and rounded edges and are secured by a bracket below the head of the parking meter on the meter post.

"The signs are mounted in a triangular arrangement with the sign facing the street parallel to the curb and they do not project beyond the curb."