OPINION 3

OFFICIAL OPINION NO. 3

January 20, 1968

CHILDREN—Emancipated Minors as Being Subject to Statute Regulating Employment of Minors

Opinion Requested by Mrs. Jane V. Seed, Director, Bureau of Women and Children, Division of Labor

I am in receipt of your request for my opinion concerning the application of the statutes restricting the employment of minors over the age of sixteen. You specifically inquire whether a seventeen year old male minor who is married or otherwise legally emancipated is subject to the reduction in maximum working hours to forty per week effected by the 1967 General Assembly.

Acts 1921, ch. 132, § 21, as last amended by Acts 1967, ch. 217, § 2, the same being Burns IND. STAT. ANN. § 28-521, provides in part:

> "No minor between the ages of fourteen (14) and eighteen (18) years shall be employed or permitted to work in any gainful occupation other than farm labor or domestic service or as a caddy to any person or persons who are engaged in playing the game of golf, or as a carrier of newspapers, more than eight (8) hours in any one (1) day, nor more than forty (40) hours in any one (1) week, nor more than six (6) days in any one (1) week, nor before the hour of six (6) o'clock in the morning. . . .
>
> "Every person, firm, corporation or company employing any minor between the ages of fourteen (14) and eighteen (18) years, in any establishment contemplated in this act shall post and keep posted in a conspicuous place in every room where such minors are employed, a printed notice stating the maximum number of hours such persons may be employed or per-

> mitted to work in each day of the week, the hours of beginning and ending each day, and the time allowed for meals; the printed forms of such notice shall be furnished by the Indiana Division of Labor and the employment of such persons for a longer time in any day than as stated or at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section. There shall be posted conspicuously in every room where minors under eighteen (18) years of age are employed, a list of their names, with their ages, respectively."

Acts 1921, ch. 132, of which the statute above is part was described in *State ex rel. Test v. Steinwedel,* 203 Ind. 457, 468, 180 N.E. 865, 868 (1932), thusly:

> "An examination of the body of the act discloses that two immediate objects, one to keep minors in school until they have reached certain ages or have completed specified amounts of school work, and the other to prevent employment of minors during that period of their lives when employment will most seriously interfere with their school attendance and injuriously affect their health."

The purpose of the Act, insofar as your question is concerned, is to protect the physical health of minors, a purpose seemingly unrelated to, and therefore unaffected by, their marital status.

Marital status, however, might make it economically desirable to the individual concerned to be able to accept employment contrary to the provisions of the Act. (Your letter states that the same problem is faced by certain minors who, although unmarried, are responsible for their own support or the support of their family.) That consideration, reasonable as it may be, does not affect the application of the statute, as evidenced by the language used by the court in *Inland Steel Co. v. Yedinak,* 172 Ind. 423, 87 N.E. 229 (1909), which case concerned an earlier Child Labor Law (Acts 1899, ch. 142). In that case, the employer of an injured under-age child sought to avoid liability on the grounds of con-

tributory negligence, alleging that prior to employment the child both stated that he was of proper age and, upon request, produced an affidavit from his mother to that effect. In discarding that defense, the court said (172 Ind. at 438):

> "The frightful abuses and distressing consequences of the employment of children in mines and factories both in England and in this country prior to the enactment of prohibitory and regulative statutes are too well known to require extended mention. These laws were not passed primarily for the personal benefit of the individuals abused, but in the exercise of the police power and for the welfare of the State. The State is vitally concerned that her children be not killed, maimed, stunted in growth or enfeebled in strength at the important period of development, so as to become a public charge, and seeks to afford them an opportunity for healthy growth in wholesome surroundings, and for acquiring an education, so that they may reach majority possessed of a sound mind in a sound body, and be capable of earning an independent livelihood and of serving the State as her needs may require. It is well known that parents often connive at and compel the overworking of their children. The object of the law cannot be thwarted by the misstatement of a parent. A child seeking work, driven by necessity or the avarice of parents, might be expected to make any statement with respect to its age requisite to secure the desired employment. No such temptation to the child should be allowed, and no such premium on the perjury of the parent should be permitted, as a release of the employer from the obligations of this statute, upon a misstatement of the child's age would afford. In disposing of a similar contention, the Supreme Court of Illinois, in the case of *American Car, etc., Co. v. Armentraut* (1905), 214 Ill. 509, 514, 73 N.E. 766, said: 'This doctrine is not applicable, for the reason that the statute under consideration is aimed at the master and not at the servant. The act of the child in accepting or entering into the employment is not unlawful. Moreover, if the child's state-

> ment to the effect that he was above the age of sixteen would constitute a defense, the law could never be enforced in any case where the child was willing to make a false statement in reference to his age for the purpose of obtaining employment. The object of this statute was entirely to prevent the employment of children under the age of fourteen in the occupations named, and it should be given a construction that will effectuate that purpose, if that end can be attained, as we think it can, without doing violence to the letter of the enactment.' See, also, *City of New York v. Chelsea Jute Mills* (1904), 88 N. Y. Supp. 1085, 43 Misc. (N. Y.) 266; *Kirkham v. Wheeler-Osgood Co.* (1904), 39 Wash. 415, 81 Pac. 869."

The Act, then, was passed with the full knowledge that the employment of minors might be economically desirable to either the minor or his family, and was specifically intended to prevent such employment when the development of the child would be hampered or his physical well being endangered. The Legislature has not provided any exception for married minors, and no such exception can be implied.

Section 21 of the Act begins "No minor between the ages of fourteen (14) and eighteen (18) years shall be employed" and proceeds to establish a limit on the number of hours per day and per week that the minor can work. Section 23 of the Act, as last amended by Acts 1967, ch. 217, § 3, the same being Burns § 28-523, begins "No minor under the age of eighteen (18) years shall be employed" and proceeds to prohibit employment in certain occupations, including coal mining, explosive manufacture, roofing, and the operation of certain power equipment. Were marriage to exempt a minor from the operation of the former section, it would also exempt him from the latter section. It is impossible to contend that marriage in and of itself would make the manufacture of nitroglycerin a less hazardous occupation for a minor. The Legislature, by not providing for an exception, has expressed its conclusion that marriage does not make employment in excess of forty hours a week less injurious to the health of a minor.

Since your letter refers to a married minor as being "emancipated," a short discussion of that concept wuold be appropriate. In *Burns v. Smith,* 29 Ind. App. 181, 64 N.E. 94 (1902), a case holding that a married minor does not have the capacity to appoint an agent and thus cannot be held liable for the tortious acts of an alleged agent, the court said:

> "The marriage of an infant with the consent of the father is an emancipation only to the extent as to enable him to make contracts for his own services, and to apply his wages to the support of his family. Otherwise it does not enlarge his power to contract, nor does it remove the disabilities of infancy so that he is bound by his contracts, except for actual necessaries." (29 Ind. App. at 184)

The court in *Wabash R. R. v. McDoniels,* 183 Ind. 104, 110, 107 N.E. 291, 294 (1914), used this definition:

> ". . . But if it can be said that in this case 'emancipation' is used in a technical sense, it means, as applied to the relinquishment of the claim to the services of a minor child, to free a child for all period of its minority, from care, custody, control and service. Webster, International Dictionary; *Bristor v. Chicago, etc., R. Co.* (1905), 128 Iowa 479, 104 N.W. 487, 488; Words and Phrases (2d Series) 243."

The concept of emancipation, then, concerns the relationship between the minor and his parent or guardian rather than the privileges and protections offered a minor by society. It would not be seriously contended, for instance, that emancipation through marriage or otherwise would automatically grant a minor the right to vote or to purchase alcoholic beverages absent any specific constitutional or statutory provision. Statutes concerning the confinement of neglected or delinquent juveniles which, like employment of a minor statutes, have been enacted for the protection of adolescents have been held to be applicable to married minors. *State ex rel. Johnson v. Wieking,* 200 Minn. 490, 274 N.W. 585 (1937).

Therefore, it is my opinion that minors emancipated from the care and custody of their parents or guardians by marriage or otherwise are subject to the statutory provisions regulating the employment of minors, including the forty working hours per week limitation imposed by the 1967 General Assembly.

OFFICIAL OPINION NO. 4

January 21, 1968

DUAL OFFICE HOLDING—CONSTITUTIONAL LAW—OFFICERS, CITY—Right of City Controller to Also Serve as Controller for Municipal Transportation Corporation.

Opinion Requested by Mr. Richard L. Worley, State Examiner.

This is in response to your request for an Official Opinion on the legal right of the City Controller of South Bend, Indiana, to also serve as Controller for the South Bend Public Transportation Corporation, the ultimate question being whether such service would violate the constitutional prohibition against holding two lucrative offices.

Article 2, § 9, of the Constitution of Indiana provides in pertinent part:

> "No person . . . shall . . . hold more than one lucrative office at the same time, except as in this Constitution expressly permitted. . . ."

It must, therefore, be determined whether the above two positions are "offices" as contemplated by the prohibition