OPINION
48-176

February 2, 1948 (OPINION)

LABOR

RE: Hours - Women - Railroad Employees

This is in reply to your letter of January 13, 1948, in which you ask the opinion of this office as to the applicability of section 34-0606 of the 1943 Revised Code, Hours of Labor for Females, in connection with railroad employees where the railroad is engaged in interstate commerce and therefore subject to the Railway Labor Act, Title 45, Chapter 8.

Specifically, your question is whether the wage and hour laws for women and minors apply to railroad employees governed by federal law, such as the Railway Labor Act.

I had occasion to discuss this matter with your deputy, Mr. Martinson, and he stated that, among other things, he had in mind women employed in the trains engaged in interstate commerce.

Section 151, U.S.C.A., Vol. 45, provides that:

> First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, (interstate commerce regulations), and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': * * *"

Subsection 5 of said section provides as follows:

> The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: * * *"

Subsection 6 of Section 152, same Title, governs disputes between a carrier or carriers and its or their employees arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, and provides rules and methods for hearings and other details in respect to

disputes or grievances.

Section 34-0606 of the 1943 Revised Code, governing hours of labor for females in this state, provides as follows:

> Notwithstanding any other provision of this chapter or any standard, rule, or regulation issued thereunder, it shall be unlawful to employ any female within this state in any manufacturing, mechanical, or mercantile establishment, or in any hotel or restaurant, or in any telephone or telegraph establishment or office, or in any express or transportation company, for more than eight and one-half hours in any one day, or for more than six days, or for more than forty-eight hours in any one week. * * *"

Then follows exceptions which are not material here.

The question arising here is as to which statutes control in case of conflict between federal statutes and state statutes dealing with the same subject matter.

In the case of Long Island R. Co. v. Department of Labor of the State of New York, 1931, 177 N.E. 17, 256 N.Y. 498, affirming 247 N.Y.S. 278, it was held that the New York Labor Law regulating hours of work and wages of laborers employed in project for elimination of railroad grade crossing were enforceable only where work is performed by others than employees of interstate carriers.

Article 6 of the constitution of the United States, we believe, is applicable here. It provides as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. * * *"

It is our opinion, therefore, that in case of any conflict between the state law referred to herein and sections 151, 1551a, and 152, Title 45 U.S.C.A., the latter must of necessity control, since the employees referred to herein are employed by carriers engaged in interstate commerce, having reference to the definition of "employee" contained in subsection 5 of the Federal Act, which we have quoted herein. The case of Long Island R. Co. v. Department of Labor of the State of New York, supra, confirms this view, and we believe also that Article 6 of the constitution of the United States, which we have quoted herein, is decisive of any question where there is a conflict between state and federal statutes. We have also been informed that the attorney general of the state of Montana has written an opinion on this subject which is in agreement with the views that we have expressed herein.

NELS G. JOHNSON

Attorney General