

**OPINION
52-96**

May 14, 1952(OPINION)

LABOR

RE: May Female Work for Two Employers Without Employers Violating the 48 Hour Law

Your letter of May 12, 1952, has been handed to me for consideration and reply.

You state that during a laundry strike, in order to staff a struck laundry, women who had been employed during the day in one laundry were shifted to the struck laundry where they were employed during the night shift, and you assume that the two employers knew that the women had worked one full shift before they started the night shift at the struck laundry.

You ask whether in our opinion this is a violation of section 34-0606 of the North Dakota Revised Code of 1943 or any other state law.

Section 34-0606 of the 1943 Code reads as follows:

HOURS OF LABOR FOR FEMALES LIMITED; EXCEPTIONS. 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 merchantile 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. This section, however, shall not apply to:

1. Females working in any municipality having a population of less than five hundred inhabitants;
2. Females working in rural telephone exchanges;
3. Females working in small telephone exchanges or in telegraph offices where the commissioner has determined after a hearing that the condition of work is so light that it does not justify the application of the provisions of this section;
4. Females who are required to work in cases of emergency, and in cases arising under this subsection females may be employed for ten hours in any one day and seven days in one week but shall not be employed for more than forty-eight hours in any one week. An emergency is deemed to exist under the provisions of this subsection:
 - a. In case of the sickness of more than one female employee in which case a doctor's certificate must be furnished showing that it will not be dangerous to human life to continue employment in the establishment involved;

- b. When such employment is required in connection with a banquet, convention, or celebration or because a session of the legislative assembly is in progress;
- c. In the case of the employment of a female as reporter in any of the courts of this state.

In cases arising under subsection 3 of this section, the commissioner shall make and establish reasonable rules and regulations under which females may be employed."

This section might be construed to refer to a single employer, and not to apply to a situation such as you describe, where neither one employed the women for more than 8 1/2 hours in any one day.

As to whether there has been a violation of any other state law, we direct your attention to section 12-0301 of the 1943 Code which reads as follows:

DEFINITION AND PUNISHMENT OF CONSPIRACY; MISDEMEANOR. In the following cases, persons shall be deemed guilty of a misdemeanor if two or more conspire:

1. To commit a crime;
2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime;
3. Falsely to institute or maintain an action or special proceeding;
4. To cheat and defraud another out of property, by any means which in themselves are criminal or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses;
5. To prevent another from exercising a lawful trade, or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment thereof; or
6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws."

If it can be proved that the two employers conspired to violate the law, or joined together in a scheme to obstruct or pervert justice, or prevent the administration of the laws, then they would be guilty of conspiracy under section 12-0301 of our Code. Conspiracy is defined as a combination between two or more persons formed for the purpose of committing some unlawful act.

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Attorney General