



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John D. Reed, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. 0-3993

Re: Does the term "dairies" as used in Art. 1578a, Penal Code, include those dairies which only process and deliver milk and milk products?

In your letter of September 18, 1941, addressed to Honorable Gerald C. Mann, Attorney General, you request an opinion on the above question.

Articles 1573 to and including Article 1578a, V. A. P. C., as amended, Acts 1929, 41st Leg., p. 391, Ch. 180, contain the "Child Labor Law" of Texas by which the employment and hours of employment of child labor in Texas are regulated. Article 1573 of the Penal Code expressly prohibits the employment, for certain labor - factory, mill, workshop, laundry or messenger service, of a child under 15 years of age in cities of more than 15,000 in population and levies a heavy fine for violation of such law. Article 1574 expressly prohibits the employment, for certain work - mine, quarry or place where explosives are used, of a child under 17 years of age, and imposes a heavy penalty for violation of said statute. Article 1576 limits and regulates the working hours of a child under the age of 15 who is not engaged in farm labor.

Article 1578a, as amended, is the last Article in Chapter 4 of Title 18, Revised Penal Code of 1925, and reads as follows:

"Provided that nothing in this Act (this chapter) shall be construed as prohibiting the employment by any person of nurses, maids, yard-servants, or others for private homes and families, regardless of

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their ages, nor applying to those engaged in agricultural pursuits. Nothing in this Act (this chapter) shall apply to the employment of children for farm labor, or to hours which children may work on farms, nor shall anything in this Act (this chapter) be construed as affecting the employment of children on farms, ranches, dairies, or other agricultural or stock-raising pursuits, nor shall any person be guilty under this Act (this chapter) where the child employed is permitted to work under the provisions of this Act (this chapter). (Undersecoring ours)

It is thus made apparent that the Legislature has seen fit to regulate only the employment and working hours of children of certain ages who are engaged in the enumerated types of labor or in the designated places; and excepts from the operation of this "Child Labor Law" of Texas, children employed by or on "dairies."

A proper definition of the term "dairy" and a further search for the underlying purpose of the above penal statutes are necessary to determine whether the Legislature in using the term "dairies" when and as it did meant to restrict its meaning to exclude therefrom those so-called dairies which only process and deliver milk and milk products.

In Words and Phrases, Permanent Edition, Vol. 11, p. 8, the following definition is found:

"A 'dairy' is an establishment for the sale or distribution of milk or milk products." State v. McCosh, 279 N. W. 775, 777.

"Where contract for employment of twelve year old boy at dairy was not illegal under Child Labor Law, Vernon's Ann. P. C. 1925, Art. 1573, act of employer in violating provisions of Article 1576 by requiring boy to work between hours of 10 p. m. and 5 a. m. held not to bar recovery of compensation for his death under Workmen's Compensation Law, Vernon's Ann. Civ. St. Arts. 8306-8309, especially since 'dairy' is defined as department of farming concerned

with production of milk, butter, and cheese, and provisions as to hours of work do not apply to employment of children for farm labor. Associated Indemnity Corporation v. Wilson, Tex., 21 S. W. (2d) 314, 317."

In 17 Corpus Juris, p. 696, the term "dairy" is described as: "Any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale. The term "dairyman" includes cow keeper, purveyor of milk, or keeper of a dairy."

The above citations certainly do not show a popular or legal distinction ever having been made concerning an establishment producing and delivering its milk, etc., and one limiting its activities to the processing and delivery of milk, etc. Assuming for the moment that the word "dairy" has two significations, the guiding rule in the construction of ambiguous terms used in statutes would require giving the word that meaning which is generally given to it in the community. But if this construction would contravene the intention of the Legislature, effect must be given to the intention. Sutherland on Statutory Construction, § 249, 249.

Furthermore, the Legislature has made no attempt to qualify or limit the meaning of "dairies" as used in Article 1578a, unless the general words, "or other agricultural * * * pursuits" which follow can be said to qualify said term to mean only those dairies substantially connected with the business of producing their own milk from their own cows in their own cow sheds. We submit that such an interpretation would be a strained and improbable one in the light of the above definitions and in view of Webster's New International Dictionary which defines "dairy" among other things:

"The place, room, or house where milk is kept and converted into butter and cheese; the department of farming or of a farm that is concerned with the production of milk, butter and cheese."

We are of the opinion that a dairy may be a dairy within the

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meaning of Article 1578a irrespective of the ownership of the cows on which it depends for its existence.

Regulation of the employment of children in purely "processing" dairy plants as distinguished from "production" dairy plants must be found, if any, within other sections of the Child Labor Laws; specifically, Article 1573, as amended, which regulates the employment of children in "factory, mill or work shop."

In *People v. R. F. Stevens Co.*, 155 N. Y. S. 39, 178 App. Div. 506, where a New York labor law provided that no employer shall operate a factory on Sunday, unless he shall post a schedule of the employees required so to work, etc. " * * * Defendant operated an establishment for pasteurizing and bottling milk, and required employees to work in the pasteurizing department on Sunday without posting the schedule. It was held that a "factory" is a structure where something is made or manufactured, and as pasteurizing and bottling milk is not "manufacturing," the defendant's place of business was not a "factory" within Section 8a of said Act. Additional cases defining "workshop" and "mill" could be enumerated which would accord with the above result.

Furthermore, the exemption of "the employment of children on farms, ranches, dairies, or other agricultural or stock-raising pursuits," now contained in Article 1578a, was lifted bodily from Article 1573, as it stood before the amendment of 1929. In our opinion this further indicates that the Legislature by its failure to place and include existing large dairy establishments within the purview of Article 1573 intended no similar regulation as to them.

In *Associated Indemnity Corporation v. Wilson*, 21 S.W. (2d) 314, a case decided in 1929, under the terms of Article 1573, before amended, which contained the identical "dairy" clause now found in Article 1578a, the Court of Civil Appeals held that the employer, (Ketzger Bros. Dairy of Dallas), of a 12 year old boy killed while delivering milk was operating a "dairy" within the terms of Child Labor Law and that such employment was not in violation of Article 1573, Penal Code. Under the fact situation of that case Ketzger Brothers' Dairy was shown to have been almost entirely a milk processing establishment. We quote from the opinion

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in that case:

"The means of converting milk from its original state as obtained from the cow into butter, cheese, cottage cheese, buttermilk, and the separation of the cream from the milk, are to be presumed to have been in the mind of the lawmaking power, and reckoned with in passing the Child Labor Law, being chapter 4, comprising articles 1573-1578a, inclusive, Rev. Gen. Statutes 1923, and likewise, the character of machinery used to accomplish the changing of the form of milk into by-products, and the character and use of machinery and equipment as employed by Metzger Bros. for the purpose of converting milk into such by-products, separating cream from the milk, sterilization of bottles, pasteurization of milk, bottling of milk for the general trade, as part of the equipment of a dairy, and that one so engaged in the changing of the form of milk was considered to be engaged in the dairy business, and was not regarded as being in the "factory business," as that term is commonly understood, namely, "a building or collection of buildings with its equipment or plant appropriate to the manufacture of goods; the place where workmen are employed in fabricating goods, wares and utensils." Webster's New International Dictionary. This is in accord with the well-recognized rule that, "The Legislature is presumed to act with a full knowledge of all facts upon which the legislation is passed, or to which it can be applied." *Erskine v. Nelson County*, 4 W.D. 66, 58 N. W. 348, 27 L. R. A. 696; *Chesapeake & P. Tel. Co. v. Manning*, 186 U. S. 238, 22 S. Ct. 881, 46 L. Ed. 1144.

"We therefore hold that within the meaning of the term 'dairies,' as used in said Article 1573, Metzger Bros. was, at the time said Ernest Wilson received his injuries, engaged in the dairy business, and that said minor was employed to work at a dairy."

This is broad language, and in our opinion, indicates that the court's holding would have been the same, even if Metzger Brothers' business had been confined exclusively to the processing and sale of milk produced by others.

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Additional authorities are inserted hereunder in support of our conclusion that the Legislature did not intend to restrict the meaning of the word "dairies" as used in Article 1578a. Waterman Lumber Co. v. Beatty, 110 Tex. 225; Bridgeport Brick & Tile Co. v. Erwin, 241 S. W. 247; 16 R. C. L., Labor, § 54.

It is therefore the opinion of this department that the term "dairies" as used in Article 1578a, Penal Code, includes those dairies which only process and deliver milk and milk products.

Yours very truly

APPROVED NOV 24, 1941

ATTORNEY GENERAL OF TEXAS

Pross Miller

FIRST ASSISTANT
ATTORNEY GENERAL

By

Glenn R. Lewis

Glenn R. Lewis
Assistant

000:775



By

Chester C. Ollison

Chester C. Ollison

