

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

The language therefore serves a double purpose. It allows the distributor his actual loss and at the same time limits said loss to 2% of receipts, which is beyond the 1% of receipts plus 2% of transfers.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Request from Internal Revenue Department for List of
Manufacturers Engaged in Industrial Homework

I have your memo of December 27th, stating that your department has had a request from the Internal Revenue Department for a list of the industrial manufacturers who have taken out industrial homeworkers manufacturers' licenses, and you ask if you should make such lists available to the Federal Government.

In view of the language contained in Section 37-J entitled, "Employment status," "All industrial homeworkers shall be presumed to be employees of their employers and not independent contractors or self-employed persons," it is my opinion that you should furnish such lists to the Department of Internal Revenue on request. Furthermore the Federal Government has been very co-operative in furnishing records of Federal employees, when they were required by this office, unless there was a special Federal statute prohibiting the producing of said records.

I find nothing in Chapter 283, P. L. 1949, which provides that these records of licenses issued by you under this Act are confidential.

RALPH W. FARRIS
Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry
Re: Definition of "Employer"

I have your memo of December 27th on the above subject, in which memo you state that in Section 37-B of Chapter 283, P. L. 1949, "employer" is defined as "any person who directly or indirectly distributes or delivers or causes to be distributed or delivered to another any materials or articles to be manufactured in a home, and thereafter to be returned to him for other than the personal use of himself or a member of his family, or to be disposed of otherwise as directed or arranged by him, or sells or causes to be sold to another person any materials or articles to be manufactured in a home, and, after such manufacture, to be repurchased by him or purchased or otherwise disposed of by any other person as directed or arranged by him: . . ."

You state that a further provision of this law provides that an employer must receive a permit, but that there are some manufacturers who refuse to take out a permit on the ground that they do not distribute materials to the workers. They do, however, give specifications as to the type of material

to be used and the homemaker may buy it from any source she desires. You then set forth two varying situations:

1. Where the manufacturer submits specifications as to the type of material, colors and amounts and states the price that he will pay.
2. Where the worker makes a sample and submits it to the employer who in turn tells her the number that he will buy similar to the sample, the price that he will pay and any variations in sizes, dimensions, colors or type that he would buy.

In this connection I wish again to call your attention to Section 37-B of Chapter 283, P. L. 1949, which provides that all homeworkers shall be presumed to be employees and not independent contractors or self-employed persons. Therefore they cannot take materials and manufacture them under a contract of manufacture and call themselves independent contractors, if the goods are returned to the manufacturer for other than his personal use, etc. If the person who is directing the homework, tells the workers what kind of material to purchase and where to purchase it, and the homemaker manufactures these articles and sends them to the employer to be sold by him in the market or otherwise disposed of, he should be considered an employer under this Act and should be required to secure a license from your department before homeworkers are allowed to send him any goods that they have manufactured under his direction. It does not matter whether the manufacturer does this directly from the home plant or has agents in the field who direct the workers as to what the manufacturer would like to have. If the manufacturer denies that he is a manufacturer and employer under the terms of this Act, you should cite Section 37-J to these skeptical manufacturers, so that they may know they are employers and not merely letting out contracts to homeworkers and thereby escaping their responsibilities as employers.

You state in the last sentence of your memo that this leaves a definite loophole, not contemplated when the law was drafted, and you ask if there is no way that you can bring such people under the Act.

In reply I will say that there is no way that you can bring anyone under the Act who does not want to come under it; but if a manufacturer directs work in the home personally or through agents and receives back a manufactured article, he is an employer. There is no question about it; and the homeworkers are employees. The statute is specific in this regard.

RALPH W. FARRIS

Attorney General

December 28, 1949

To Marion E. Martin, Commissioner of Labor and Industry

Re: Promulgation of Elevator Rules

I have your memo of December 27th, stating that under Section 99-C of Chapter 374, P. L. 1949, public hearings have been held and rules and regulations will be finally adopted by the Board of Elevator Rules and Regulations on January 6th. You state that the requirements of law have been met by the Board so far, and you now wish to know what procedure you should follow to have the rules properly promulgated.