

# MAINE STATE LEGISLATURE

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August 4, 1960

Marion E. Martin, Commissioner

Labor and Industry

James G. Frost, Deputy Atty. Gen.

Attorney General

**Minimum Age in Construction Work**

We have your memo of July 22, 1960 in which you ask for an interpretation of Chapter 30, section 88-C, Revised Statutes of 1954, as amended, enacted by Chapter 466, Public Laws of 1955 (Board of Construction Safety Rules and Regulations.)

This Board was established for the purpose of formulating and enforcing rules and regulations for safe and proper operations in construction within the state. Section 88-C provides that the rules and regulations so formulated shall conform as far as practicable to the standard safety codes for construction.

**Question:** You ask if it would be proper for the Board to include in its rules and regulations for a minimum age for employment in construction.

**Answer:** We are of the opinion that such a rule and regulation would not be proper.

Under the provisions of sections 22 to 43, Chapter 30, Revised Statutes of 1954, as amended, the legislature has enacted comprehensive laws relating to the employment of women and children, setting forth the various ages below which employment in industry is prohibited or limited.

Section 23, for example, prohibits minors under 16 years of age from being "employed, permitted or suffered to work in, about or in connection with any manufacturing or mechanical establishment, hotel, rooming house, laundry, dry cleaning establishment, bakery, bowling alley, poolroom, commercial places of amusement, including traveling shows and circuses, in any theater or moving picture house as usher or attendant, nor in or about a projection booth."

And Section 25 provides that "No child under 15 years of age shall be employed, permitted or suffered to work in, about or in connection with any eating place, sporting or overnight camp or mercantile establishment. Except as otherwise provided, no child under 15 years of age shall be employed, permitted or suffered to work at any business or service for hire, whatever, during the hours that the public schools of the town or city in which he resides are in session. The provisions of this section shall not apply to any such child who is employed directly by, with or under the supervision of either or both of its parents."

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Altogether, these sections are so written as to exempt certain businesses from like control. And you pointed out that the Maine Legislature has on several occasions had under consideration legislation to establish a minimum age for employment in construction, but "has not seen fit to enact such a law."

Our decision can be said to have two reasons for a basis.

Firstly, such a comprehensive set of laws restricting employment of minors would seem to negate any intent of the legislature that such restrictions could be enacted by rule and regulation.

Secondly, a rule and regulation cannot take precedence over a statute. We believe that the legislature, in specifically enumerating those endeavors which are to be regulated with respect to the age of employees, intended to exempt those endeavors not so regulated. A rule and regulation to the contrary would have the effect of overriding a law. This cannot be done. McKenney v. Farnsworth, 121 Me. 450.

James Glynn Frost  
Deputy Attorney General

JGF:H