

# MAINE STATE LEGISLATURE

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November 22, 1967

Marion E. Martin, Commissioner

Labor & Industry

Warren E. Winslow, Jr.

Attorney General

Interpretation of 26 M.R.S.A. § 2.

**FACTS:**

This Office has been asked to give the Department of Labor & Industry an opinion as to whether or not two factual situations fall within the meaning of the term "industrial establishment" as it is used in the second line of 26 M.R.S.A. § 2. The first situation involved a fatality from a logging operation; the second, a 16 year old girl who lost her arm while working in a potato field. Reports of these accidents were not submitted to the Department of Labor & Industry and no investigation has been made into the causes thereof. The Department of Labor & Industry's Industrial Safety Director has raised the question whether or not the term "industrial establishment" is broad enough to include such logging and farming operations. If so, the Department of Labor & Industry has not been fulfilling its duty under 26 M.R.S.A. § 2.

**QUESTION:**

Whether these factual situations fall within the meaning of "industrial establishment" as it is used in the second line of 26 M.R.S.A. § 2?

**ANSWER:**

No.

**OPINION:**

26 M.R.S.A. § 2 reads in part as follows:

"The person in charge of any factory, workshop, construction activity or other industrial establishment shall, within 10 days after the occurrence report in writing to the Commissioner of Labor & Industry all deaths, accidents, or serious physical injuries sustained by any person therein or on the premises, stating as fully as possible the cause of the death or the extent or cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto as may be required by said Commissioner, who may investigate

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November 22, 1967

the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings . . ."

In Abbedessa v. Board of Zoning Appeals of City of New Haven, 134 Conn. 28, 54 A. 2d 675 (1947) the Court says:

"The meaning of the words "industrial establishment" as used in the ordinance before us must be determined in the light of its provisions as a whole and its intended purposes."

The Court went on to find that a manufacturing company's use of a lot, separated from the company's factory by a street and intervening lot, for parking of employees' automobiles was not an extension of its "industrial establishment" within the city ordinance. We too must read the words "industrial establishment" with reference to the entire statute and its intended purposes. 26 M.R.S.A. § 2 uses the words factory, workshop, construction activity or other industrial establishment. 26 M.R.S.A. § 1 defines factory and workshop:

"Factory means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on."

"Workshop means any premises, room or place, not being a factory, wherein any manual labor is exercised by way of trade, or for the purpose of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place the employer of the person or persons working therein has the right of access or control . . ."

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Reading these two sections together we get the overall scope of the statute and some insight into its general meaning. It would appear that the word "industrial" is to be interpreted consistently with factory and workshop. The situations about which you have inquired fall clearly under agricultural endeavors, rather than industrial endeavors.

In State Ex Rel. Kansas City Power & Light Company v. Smith, 342 Mo. 74, 111 S.W. 2d 513 (1938) the Court attempts to define the term with which we are dealing when it says: "The ordinarily accepted meaning of the phrase "industrial establishment" denotes a place of business which employs much labor and capital and is a distinct branch of trade; as, the sugar industry." The Court then found that the transportation of passengers did not come within this definition.

These cases appear to be the only reported cases on this precise question. By reading the two together we come to the conclusion that the situations about which you inquire do not fall within the meaning of the words "industrial establishment" and therefore reports of these accidents need not be submitted to your Department.

WEW, Jr./mf

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Warren E. Winslow, Jr.  
Assistant Attorney General