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STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

August 19, 1974

Opinion No. 74- 283

Darrell D. Carlton  
Commissioner of Labor  
401 Topeka Avenue  
Topeka, Kansas 66603

Dear Commissioner Carlton:

K.S.A. 38-601 states thus:

"No child under fourteen (14) years of age shall be at any time employed at any occupation or trade in any business or service, except as provided by section 5 [38-614] of this act."

K.S.A. 38-614 states in pertinent part thus:

"For the purposes of article 6 of chapter 38 of the Kansas Statutes Annotated, or acts amendatory thereto or supplementary thereof, the following shall not be considered employment: children employed by their parents in nonhazardous occupations; domestic service; casual labor in or around a private home; delivery or messenger work; delivering or distributing newspapers or shopping news; and *agricultural, horticultural, livestock or dairying pursuits and employments incident thereto.*" [Emphasis supplied.]

You inquire whether employment in mills and elevators is incident to agricultural employment and therefore not subject to the Kansas Child Labor Act.

Agricultural pursuits are commonly exempted from workmen's compensation acts. At 58 Am. Jur., *Workmen's Compensation*, § 97, the writer states thus:

"The expression 'agriculture' has been construed as including horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growing of fruit and vegetables. It has been said that the phrase 'agricultural pursuit' may properly include every process and step taken and necessary to the completion of a finished farm product. . . . Some kinds of labor which are not inherently agricultural, such as the repair of machinery or buildings, may or may not be regarded as agricultural labor when performed in connection with farming operations, depending on the circumstances." [Footnotes omitted.]

At 3 Am.Jur.2d, *Agriculture*, § 1, the writer advances a general but comprehensive description of the activities encompassed within the term:

"In its broad and commonly accepted sense, 'agriculture' may be defined as the science or art of cultivating the soil and its fruits, especially in large areas or fields, and the rearing, feeding, and management of livestock thereon, including every process and step necessary and incident to the completion of products therefrom for consumption or market and the incidental turning of them to account. 'Agriculture' is broader in meaning than 'farming'; and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, . . . . More specifically, however, it refers to the field, or farm, with all its wants, appointments, and products . . . ."

In *Bucher v. American Fruit Growers Co.*, 163 A. 33 (Penn. 1932), a workmen's compensation case, the question was raised whether an employee hired to haul apples from farms to a shipping point was engaged in "agriculture." The court stated thus:

"Of course, the storage and marketing of the crop raised, whether it be fruit or grain, is just as much the work of agriculture as is the planting and cultivation thereof, or any other labor engaged in for the purpose of furthering, as a main or an incidental purpose, the cultivation of the ground or raising of crops. We are convinced that . . . the claimant, in helping the defendant for compensation to harvest and deliver for shipment or storage

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the crop of apples obtained from the orchards of the defendant, was engaged in the pursuit of agriculture."

Thus, one who is employed by a farmer to assist in the marketing of his crop may be engaged in an agricultural pursuit while so employed. However, when an individual is employed not by a farmer, however, but by a milling company, elevator operator or other warehouseman, to perform work which is not itself incident to the cultivation and raising of agricultural products, but which is incident only to the handling and processing of agricultural products by a commercial warehouseman or milling company, such an employee is not, in our view, engaged in agricultural work or work incident thereto. Commercial warehousing and milling operations are not, in and of themselves, inherently agricultural activities. Notwithstanding agricultural products are involved, milling and warehousing retains its separate identity and character as a commercial activity separate and apart from agricultural pursuits. Employment in and by milling or warehousing business does not become "incident to" agricultural work merely because agricultural products are involved.

Accordingly, it is our opinion that employment in and by a mill or elevator is not incident to agricultural employment, and is subject to the provisions of the Kansas Child Labor Act.

Yours very truly,

  
VERN MILLER  
Attorney General

VM:JRM:jsm