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FILE NO. S-975
LABOR:
Six Day Week Law

Donald A. Johnson
Director
Department of Labor
State of Illinois
Room 704 State Office Building
Springfield, Illinois 62706

Dear Director Johnson:

This responds to your request for an opinion concerning "AN ACT to promote the public health and comfort of persons employed by providing for one day of rest in seven". (Ill. Rev. Stat. 1973, ch. 48, pars. 8a et seq.) This Act provides in general that every employer shall allow every employee at least 24 consecutive hours of rest in every calendar week. Section 3 (Ill. Rev. Stat. 1973, ch. 48, par. 8c) provides in part:

"§ 3. This Act does not apply to:

* * *

(2) Employees needed in case of breakdown of machinery or equipment or other emergency re-

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quiring the immediate services of experienced and competent labor to prevent injury to persons, damage to property, or suspension of necessary operations: and

* * *

You request an opinion as to whether in light of this section, the Act applies to employees furnished by an employer engaged as a contractor to supply labor upon a contract to another person when that other person is facing an emergency. For example, assume Company A is required to suspend "necessary operations" (an emergency) because a piece of equipment is not working. Company A has contracted with Company B for service and repair of its equipment. Even though the emergency facing Company A does not force Company B to suspend operations, are Company B's employees within the exemption provided by section 3 so that they may service the equipment of Company A?

The Act does not define the term "employee". The term has neither, technically nor in general use, a restricted meaning by which any particular employment or service is indicated. It is not a word of art but takes color from its surroundings. The context and the connection in which it is used must largely determine whether in a particular case the term includes a certain person. 30 C.J.S. Employee.

The Act gives a broad definition of "employer" in

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section 1 (Ill. Rev. Stat. 1973, ch. 48, par. 8a) as follows:

"§ 1.

* * *

'Employer' shall mean a person, partnership, joint stock company or corporation, which employs any person to work, labor or exercise skill in connection with the operation of any business, industry, vocation or occupation."

This includes an employer engaged as a contractor to supply labor upon a contract to another person. This was specifically set forth in the prior version of the Act. (Laws of 1935, p. 839.) "Employee" is a correlative of the term "employer" and should have an equally broad definition.

I, therefore, am of the opinion that under section 3 this Act does not apply to employees of the type about which you inquire.

Such an interpretation will fulfill the purpose of this exemption, which is to allow repairs to be made during an emergency. To adopt an interpretation of the Act which would not exempt such employees would make the exemption turn on the mode of operation of a company and not on whether in fact an emergency existed. Such an interpretation could unfairly discriminate between large and small companies. Such interpretation will not unduly restrict the operation of the Act. The exemption applies only in case of an emergency.

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The operational word in this section is not "employees" but "emergency".

Very truly yours,

A T T O R N E Y G E N E R A L