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OPINION	:	No. 80-420
of	:	<u>July 22, 1980</u>
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SUBJECT: MAXIMUM HOURS RESTRICTIONS—The maximum hours restrictions contained in Labor Code section 1391 are inapplicable to the use of wards under the age of 18 by the Department of the Youth Authority in forestry and conservation work performed pursuant to Welfare and Institutions Code sections 1760.4 and 1760.5.

The Honorable Pearl S. West, Director, Department of the Youth Authority, has requested an opinion on the following question:

Are the maximum hours restrictions contained in Labor Code section 1391 applicable to the use of wards under the age of 18 by the Department of the Youth Authority in forestry and conservation work performed pursuant to Welfare and Institutions Code sections 1760.4 and 1760.5?

CONCLUSION

The maximum hours restrictions contained in Labor Code section 1391 are inapplicable to the use of wards under the age of 18 by the Department of the Youth Authority in forestry and conservation work performed pursuant to Welfare and Institutions Code sections 1760.4 and 1760.5.

ANALYSIS

Youth Authority wards may be divided into two classifications: those committed under the juvenile court system pursuant to Welfare and Institutions Code sections 731 and 1736¹ and those committed under the criminal court system pursuant to section 1731.5. (See *People v. Olivas* (1976) 17 Cal. 3d 236, 240–241 fn. 5; *People v. Jiminez* (1979) 94 Cal. App. 3d 707, 709–711.)

Whether a ward happens to be a juvenile (17 or under) or an adult (18 or over), the period of commitment is not for punishment but rather for “training and treatment directed toward the correction and rehabilitation of young persons. (§ 1702; see *In re Eric J.* (1979) 25 Cal. 3d 522, 531; *In re Aline D.* (1975) 14 Cal. 3d 557, 567; *In re Leonard K.* (1977) 76 Cal. App. 3d 100, 104; *People v. Zaccarta* (1963) 216 Cal. App. 2d 787, 791.)

As we stated in 61 Ops. Cal. Atty. Gen. 186, 190 (1978), “The purpose of the Youth Authority is not to punish youth by hard work, but rather to rehabilitate and train them for future occupations. [Citation.] The goal is to break the prior criminal pattern and replace it with academic and vocational opportunities.”

The Legislature has given the Youth Authority broad powers to use various facilities, institutions and agencies, both public and private, for the training and treatment of its wards. (§§ 1752–1753, 1760.) One Youth Authority program involves operating forestry camps in conjunction with the Department of Forestry.² The duties of the wards in such camps have been described as follows: “During fire season, the main job assignment is firefighting. When the fire season is over, wards are involved in tasks such as nursery operations, minor construction and cleaning up state parks. Additionally, each camp has one crew assisting in operating the dining and kitchen areas as well as maintaining campgrounds.” (61 Ops. Cal. Atty. Gen. 186, 190 (1978).)

Sections 1760.4 and 1760.5 authorize the Youth Authority to require wards living in forestry camps to perform various types of forestry work, including fire suppression if certain conditions are met. Section 1760.4 provides:

“The wards housed in forestry camps established by the Department of the Youth Authority may be required to labor on the buildings and grounds of the camp, on the making of forest roads for fire prevention or firefighting,

¹ All statutory references hereinafter are to the Welfare and Institutions Code unless otherwise indicated.

² The board of supervisors of a county may also establish a forestry camp for certain juvenile wards under the provisions of sections 880-884.

on forestation or reforestation of public lands, or on the making of firetrails and firebreaks, or to perform any other work or engage in any studies or activities prescribed or permitted by the department or any officer designated by it. Such wards may be required to labor in fire suppression if all of the following conditions are met:

“(a) The ward is under the age of 18 years and the parent or guardian of the ward has given permission for such labor by the ward or the ward is 18 years of age or over.

“(b) The ward has received not less than 16 hours of training in forest firefighting and fire safety.

“The department may provide, in cooperation with the Department of Parks and Recreation and the Department of Conservation or otherwise, for the payment of wages to the wards for work they do while housed on such camps, the sums earned to be paid in reparation, or to the parents or dependents of the ward, or to the ward in such manner and in such proportions as the Department of the Youth Authority directs.”

Section 1760.5 states:

“The director may require persons committed to the authority to perform work necessary and proper to be done by the Division of Forestry, the Department of Parks and Recreation, and the Department of Fish and Game, by the Division of State Lands, by the United States Department of Agriculture, and by the federal officials and departments in charge of national forests and parks within this state. For the purposes of this section, the director, with the approval of the Department of General Services, may enter into contracts with federal and state officials and departments. All moneys received by the director pursuant to any such contract shall be paid into the State Treasury to the credit and in augmentation of the current appropriation for the support of the authority. The director may provide, from such moneys, for the payment of wages to the wards for work they do pursuant to any such contract, such wages to be paid into the Indemnity Fund created pursuant to Section 13967 of the Government Code, or to the parents or dependents of the ward, or to the ward in such manner and in such proportions as the Department of the Youth Authority directs.”

We are informed that it is the practice of the Youth Authority to place wards in the forestry camps who are at least 16 years of age. Tasks performed within the camps are

assigned to those 16 and to those who are older but physically unable to perform fire suppression or conservation work. With regard to fire suppression, those who are 17 are treated identically to those 18 and over in work assignments, hours, and conditions, once parental or guardian permission is given.

We are also informed that the hours per day and hours per week of forestry work varies widely as to season, weather, and emergencies. The question presented for analysis concerns whether a Labor Code provision restricting the number of hours worked by minors is applicable to the work assignments of the 17 year old wards in fire suppression activities. Specifically, we are asked to construe the provisions of Labor Code section 1391, which provides:

“Except as provided in Sections 1297 and 1298, no minor shall be employed more than eight hours in one day of 24 hours or more than 48 hours in one week, or before five o’clock in the morning, or after 10 o’clock in the evening; but a minor may work the hours authorized by this section during any evening preceding a non-school day until 12:30 in the morning of such non-school day.

“Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of any provision of this section is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$ 50) nor more than two hundred dollars (\$200) or imprisonment in the county jail for not more than 60 days or both.”³

While the obvious purpose of section 1391 is to protect the health, education, and welfare of minors (see § 1391.1), the Legislature has not provided an absolute restriction upon the number of hours or time of day that minors may work. Several exceptions to the limitations found in section 1391 have been carved out in other statutes.

Section 1391.1 allows minors 16 and over in work experience education programs to work until 12:30 a.m. under certain conditions. Section 1391.2 treats a minor as an adult, notwithstanding section 1391, if the minor “has been graduated from a high school maintaining a four-year course above the eighth grade of the elementary schools, or who has had an equal amount of education in a private school or by private tuition, who has been awarded a certificate of proficiency pursuant to section 48412 of the Education Code.” Similarly, subdivision (d) of section 1394 exempts from the provisions of section 1391, “The employment of any minor by engineers engaged in survey work as part of a

³ The references to Sections 1297 and 1298 contained in the statute concern the selling of newspapers and the providing of messenger service are inapplicable to our discussion herein.

survey crew in the field.”

With regard to agricultural, horticultural, viticultural, or domestic labor, during nonschool periods, a minor 16 or over may work for more than eight hours in one day or more than 48 hours in one week, or he may work without any of the restrictions of section 1391 where the work is performed for or under the control of his parent or guardian and is performed upon or in connection with premises owned, operated or controlled by the parent or guardian. (§§ 1394, subds. (a), (b), (3), 1394.1.)

The restrictions of section 1391 are also inapplicable under limited circumstances involving appearances in entertainment and exhibition shows. (§§ 1308.5, 1394.5–1397.)

Consequently, section 1391 broadly restricts the hours of employment of minors, and several statutes carve out exceptions to the general restrictions.

The problem that we have is that the Legislature has not expressly indicated whether Youth Authority wards are covered under section 1391. It has not defined “minor” under the statute to specifically include a Youth Authority ward and it has not defined “person” to specifically include the Youth Authority or state agencies in general.

We thus necessarily turn to principles of statutory construction in order to determine whether the use of wards by the Youth Authority in forestry and conservation work comes within the prohibitions of section 1391. The Supreme Court has recently stated the applicable rules as follows:

“[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. ‘Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.’ [Citations.]” (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 276–277; accord, *Regents of University of California v. Superior Court* (1976) 17 Cal. 3d 533, 536.)

Pursuant to this latter principle, governmental entities have been held subject to legislation which by its terms applies simply to any “person.” (*City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal. 3d 199, 277; *Flournoy v. State of California* (1962) 57 Cal. 2d 497, 498–499; *Hoyt v. Board of Civil Service Commrs.* (1956) 21 Cal. 2d 399; 402;

State of California v. Marin Mun. Water District (1941) 17 Cal. 2d 699, 704–705; *Estate of Cooke* (1976) 57 Cal. App. 3d 595, 602.)

The crucial distinction in each of these cases concerns whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired (see *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 182–183; *City of Orange v. Valent*, (1974) 37 Cal. App. 3d 240, 244), while no exception is provided when the agency’s public purposes are unaffected. (See *Regents of University of California v. Superior Court*, *supra*, 17 Cal. 3d 533, 537; *Flournoy v. State of California*, *supra*, 57 Cal. 2d 497, 498–499; *State of California v. Marin Man. Water District*, *supra*, 17 Cal. 2d 699, 704–705; *City Streets Imp. Co. v. Regents* (1908) 153 Cal. 776, 779; *Dropo v. City & County of S.F.* (1959) 167 Cal. App. 2d 453, 460.)

Applying these principles to the circumstances before us, we believe that the work performed by Youth Authority wards under sections 1760.4 and 1760.5 is part of the fundamental purposes and functions of the Youth Authority “directed toward the correction and rehabilitation of young persons.” Application of section 1391 to the Youth Authority would affect and impair its statutorily authorized duties to train the wards for future occupations.

In closely similar circumstances, we have previously concluded that other Labor Code provisions of a general nature were inapplicable to the state and its subdivisions. In 9 Ops. Cal. Atty. Gen. 275, 276 (1947), we concluded that laws restricting the work day of females and minors in certain occupations were inapplicable to state employees, in 5 Ops. Cal. Atty. Gen. 122, 123 (1945), we concluded that a law prohibiting the employment of minors under the age of 16 in dangerous occupations was inapplicable to a county, and in 1 Ops. Cal. Atty. Gen. 607, 608 (1943), we concluded that a law requiring a semimonthly itemized disclosure to an employee of the deductions made from his paycheck was inapplicable to county employment relationships.

The Legislature, manifestly aware of the principles of sovereign immunity, has on occasion ‘expressly brought persons performing specified services for the state or its subdivisions within the general provisions of the Labor Code, such as in the areas of workers’ compensation (see Labor Code §§ 3351, 3370, Penal Code §§ 4017, 4125.1) and health and safety (see Labor Code § 6304.2) and within the general provisions of Unemployment Insurance Code. (See Unemploy. Ins. Code § 634.5.)

Here, since neither the Youth Authority nor its wards has been expressly defined to be included within the provisions of section 1391, we accordingly conclude that the maximum hours restrictions of the statute are inapplicable to the use of wards under the

age of 18 by the Youth Authority in forestry and conservation work performed pursuant to sections 1760.4 and 1760.5.
