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April 1, 1955
Opinion No. 55-71

REQUESTED BY: Sheriff Ben J. McKinney
Sheriff of Pima County
Tucson, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
H. B. Daniels, Assistant Attorney General

QUESTION: The Pima County Sheriff's Office has on its payroll two women, who are on duty for alternate 24 hour periods. Is such employment in violation of Section 56-320, A.C.A. 1939, relating to the hours of employment of women?

CONCLUSION: Yes.

Your letter of March 9, 1955, in which you presented to us these facts:

" * * * There are two ladies on the Sheriff's payroll who do matron work and are on duty for alternate twenty-four hour periods. * * *"

poses the question whether the Sheriff's Office is in violation of Section 56-320, A.C.A. 1939.

Section 1, Article 18, of the Arizona Constitution, reads as follows:

"§ 1. (Eight-hour day.)--Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of, the state or any political subdivision of the state. The legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violations of said laws." (Emphasis supplied)

From this constitutional declaration the Legislature enacted the following legislation relating to hours of employment in the state:

"Eight hours (8) and no more, shall constitute a lawful day's work for any person doing manual and mechanical work, employed

in behalf of the state or any political sub-
division thereof * * *". 56-101 A.C.A. 1939.

"No employer, employing females in any labor other than domestic work, shall employ or suffer any female to work more than eight (8) in any one (1) day nor more than forty-eight (48) hours in any one (1) week, the eight (8) hours to be performed in a period not to exceed thirteen (13) consecutive hours * * *". 56-320, A.C.A., 1939.

The fact that the constitutional amendment is not self-executing is of no moment. A right provided by the constitution may not be abrogated or denied by the Legislature, nor can the right be taken away by the failure of the Legislature to act. ROSE v. STATE, (Cal.) 105 P2d 302, 310. Our Supreme Court approved this rule in COUNTY OF MOHAVE v. CHAMBERLIN No. 5894, March 15, 1955. Section 1, Article 18 of the Arizona Constitution is designed to protect and preserve the rights of the individual, not the State. STATE v. FLETCHER, 168 Okla. 538 (1934).

Section 56-101, A.C.A. 1939, governs in a general way the hours to be performed by those engaged in "manual and mechanical" work, its application to the question at hand is of no import, except as applied to political subdivisions; nor does the fact that the duties of a jail matron are not mechanical or manual materially affect the statute herein questioned.

The particular article with which we are concerned is Article 3, A.C.A., 1939, which is an act "Relating to Hours of Labor for Females in Certain Occupations". LAWS of 1931, Chapter 14. This article pertains to employment of women and children. The specific section is 56-320, A.C.A., 1939. This section is not confined to mechanical and manual labor. It prescribes that females shall not work more than eight (8) hours, except for enumerated occupations exempted, and jail matrons are not exempted. See: STATE v. DOMINION HOTEL, INC.

The provisions of Section 56-320 are definitive and in accord with the general policy of the state and should apply to the state and its political subdivisions.

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For the foregoing reasons, it is, therefore, the opinion of the Department of Law that the employment of women by the Sheriff's Office for a tour of duty of twenty-four hour alternate periods violates the provisions of Section 56-320, A.C.A., 1939.

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