

OFFICIAL OPINION NO. 69-39, Minimum Wage Law applies to those 17 and over. Car hops are covered by minimum wage

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

April 21, 1969

The Honorable Floyd Snyder, Jr.  
State Representative  
Watertown, South Dakota 57201

OFFICIAL OPINION NO. 69-39

**Minimum Wage Law applies to those 17 and over. Car hops are covered by minimum wage**

Dear Representative Snyder:

We are in receipt of your request for an official opinion regarding Senate Bill #62 (Minimum Wage Law) passed by the 1969 Legislature.

The specific questions you wish answered are:

"1. Does a person become covered under the Act upon attaining the age of seventeen, or upon attaining the age of eighteen?"

"2. Is a "car hop" covered by this Act?"

This Act provides that:

"No person over the age of seventeen years shall be employed in any factory, workshop, mechanical or mercantile establishment, laundry, dry cleaners, hotel, hospital, motel, restaurant, construction work, lumbering occupation, mining work, elementary or secondary school, or institution of higher learning, or packing house at a wage less than one dollar per hour."

"Over" means beyond or above, or in excess of the certain quantity or limit. In **Bay Trust Co. v. Agricultural Life Insurance Co.**, 271 NW 749, 850, 279 Mich. 248, an insured died at the age of sixty years, two months, and ten days. The court held that a double indemnity clause in his life insurance policy which became inapplicable "over age of sixty years" barred his recovery on the policy because he was over the age of sixty years. The common law rule, which is followed in the absence of a statute, is that a person attains a given age on the day preceding the anniversary of his birth, **People v. Stevenson**, 245 NY Supp 2d. 161.

Therefore, the answer to your first question would be, the law is applicable to those persons who have attained their seventeenth anniversary birth date.

It is well established that a "restaurant" is an establishment where refreshments or meals may be procured by the public: a public eating place. **Stolpz v. McConnell**, 202 S 2d 451, 454 (Louisiana) **Drucker v. Frisina**, 219 NY Supp 2d, 680, 681, 31 Misc 2d 469. This definition is broad enough to encompass a "drive-in." In the case of **Food Corporation v. Zoning Board of Adjustments of City of Philadelphia**, 121 A 2d 94, 384 P 288, it was held that a drive-in, self-service restaurant was a "restaurant" for zoning purposes even though consumption of the food was to take place in automobiles parked upon the premises.

Accordingly, it is my opinion that "car hops" working in a drive-in restaurant would be covered under the Act if they have attained their seventeenth birthday.

Respectfully submitted,

Gordon Mydland  
Attorney General