

Harry Hughes
Governor

May 26, 1983

Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21401

Re: Senate Bill 199

Dear Governor Hughes:

We have reviewed for constitutionality and legal sufficiency Senate Bill 199, which seeks to regulate certain forms of industrial homework engaged in by garment manufacturers. For reasons more fully detailed below, it is our opinion that because of amendments to key provisions of the bill, Senate Bill 199 was apparently intended to sanction conduct violative of federal law and regulations of the Department of Labor. Even if construed so as not to conflict with the federal scheme, the bill, if signed, nevertheless would result in an invitation to violate federal law. For these reasons, we do not approve the bill.

Industrial homework has been the subject of strict federal controls for more than 40 years. In the early 1940's, the Labor Department banned industrial homework (with minor exceptions) in selected industries as "a necessary means" to make effective minimum wage orders. Gemsco v. Walling, 324 U.S. 244, 245 (1945). This prohibition, which was upheld by the Supreme Court, Id., was imposed on the basis of findings that minimum wages could not otherwise be maintained in such industries, Id. at 249, and that low paid homeworkers, by competing with factory workers, destroyed the latter's right to a minimum wage. Id. at 259. In 1949, Congress expressly authorized the Labor Department to regulate, restrict or prohibit industrial homework. 29 U.S.C. §211(d). 1/ This authority apparently contains the same limitation that exists with respect to the Department's authority under other provisions of the Fair Labor Standards Act, namely, it only reaches employees "engaged in commerce". 29 U.S.C. §203(b). However, the Supreme Court has recognized that the purpose of the federal act, of which §211(d) is a part, is to extend federal control "throughout the farthest reaches of the channels of interstate commerce." Walling v. Jacksonville Paper Co., 317 U.S. 564, 567 (1943). And, "[n]o de minimus rule applies to the Act: any regular contact with commerce, no matter how small, will result in coverage." Marshall v. Victoria Transportation Co., Inc., 603 F.2d 1122, 1124 (5th Cir. 1979).

Until 1981, the ban on industrial homework extended to seven industries: women's apparel; jewelry manufacturing; knitted outerwear; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. See 29 C.F.R. Part 530. 2/ However, effective November 9, 1981, the Labor