

Resolution 04-09-2009

Employment of Minors: Definition of “Community Entertainment”

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 1310 as follows:

- 1 § 1310
2 Nothing in this article or Article 2 (commencing with Section 1390) of Chapter 3
3 shall prohibit or prevent:
4 (a) The appearance of any minor in any church, public or religious school, or
5 community entertainment. "Community entertainment" means performing arts events,
6 including dance, music, opera, and theater arts, produced by non-profit organizations in
7 which members of the community are invited to participate as non-professional members of
8 the cast, crew, ensemble, troupe, staff, and/or production.
9 (b) The appearance of any minor in any school entertainment or in any entertainment
10 for charity or for children, for which no admission fee is charged.
11 (c) The appearance of any minor in any radio or television broadcasting exhibition,
12 where the minor receives no compensation directly or indirectly therefor, and where the
13 engagement of the minor is limited to a single appearance lasting not more than one hour,
14 and where no admission fee is charged for the radio broadcasting or television exhibition.
15 (d) The appearance of any minor at any one event during a calendar year, occurring
16 on a day on which school attendance is not required or on the day preceding such a day,
17 lasting four hours or less, where a parent or guardian of the minor is present, for which the
18 minor does not directly or indirectly receive any compensation.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing Law: Provides no definition of “community entertainment” as used in Labor Code section 1310 to exempt the application of certain wage and hour laws to minors participating in such “community entertainment.”

This Resolution: Establishes the definition of “community entertainment” for purposes of the limited exemption from certain wage and hour laws for minors under Labor Code section 1310, subdivision (a).

The Problem: Despite the presence of the exemptions found in Labor Code section 1310 for more than 50 years, neither the legislature nor any court has provided a definition of “community entertainment.” A thorough review of all available legislative history of section 1310 and its predecessor statutes reveals that the legislature intended to relax the wage and hour requirements

for non-professional minors who wished to participate in community activities related to the performing arts.

Nevertheless, in recent years, the Division of Labor Standards Enforcement (“DLSE”) has cited numerous non-profit performing arts organizations around the state for labor law violations for using minors in such seasonal community productions as “The Nutcracker” and “A Christmas Carol,” as well as many other community productions. One example: A non-profit community theater was issued numerous citations, amounting to more than \$20,000 in potential fines, for using non-professional minors from the community to perform in a one-week performance of “The Sound of Music” in the summer of 2008. Many of these non-profit organizations have dropped all productions involving minors due to the DLSE’s recent pattern of enforcement of numerous labor laws involving minors, including payment of minimum wage and the hiring of multiple studio teachers, at union rates, to oversee all rehearsals and performances. Other organizations, such as local ballet companies who rely on the annual income from “The Nutcracker” to fund their other productions throughout the year, have come close to closing their doors due to their financial inability to treat the non-professional minors as employees.

The DLSE’s recent enforcement position risks the continued viability of community non-profit performing arts organizations throughout the state, many, if not most, of which operate on shoestring budgets and survive only through volunteer community participation and support. Furthermore, due to decades of statewide educational budget cuts, the majority of elementary and secondary schools no longer provide any performing arts instruction. But for local community groups picking up the slack, these opportunities would be lost to generations of our state youth. If forced to comply with financially and administratively onerous labor rules and regulations, a great number of these organizations simply will not survive.

The proffered definition for “community entertainment,” adopted from the legislative history and intent behind the statute, would give these non-profit community performing arts groups the flexibility needed to survive, to continue to provide educational opportunities to our state’s youth, and to continue to enrich the cultural life of our state’s communities.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Kelly L. Borelli, Employment Law Counsel, LLP, 9630 Bruceville Road, Suite 106-297, Elk Grove, CA 95757; voice (916) 833-3216; fax (916) 714-4995; email kborelli@emlawco.com

RESPONSIBLE FLOOR DELEGATE: Kelly L. Borelli