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THE OHIO WORKERS TRAINING COMMITTEE HAS THE AUTHORITY TO APPROVE VOCATIONAL RETRAINING COURSES EVEN THOUGH THEY ARE NOT FINANCED BY STATE FUNDS—§§4141.29, R.C., A. H. B. 856, 104th, 3304.04, R.C., INFORMAL OPINION 473, OAG, 1962, 3304.02, R.C.

SYLLABUS:

Under Sections 4141.29 and 3304.02, Revised Code, the Ohio Worker Training Committee has the authority to approve vocational training courses for the training or retraining of unemployed persons, even though such courses are not financed by state funds, and not financed, assisted, or supervised by said Committee.

Columbus, Ohio, October 9, 1962

Hon. Donald B. Leach, Administrator
Bureau of Unemployment Compensation, 427 Cleveland Avenue,
Columbus 16, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

“Under the provisions of Section 3304.04 (B), Revised Code, the Ohio Worker Training Committee is directed to promote and encourage the development of unemployed worker training programs by local governments, business and industrial groups, and labor organizations. In addition the committee is authorized to assist such groups in the establishment and conduct of such training programs. Under the provisions of Section 3304.04 (A), Revised Code, the Ohio Worker Training Committee is authorized to devise and assist in the establishment of training programs for unemployed workers. These latter programs, conducted or supervised by the Division of Vocational Education of the Department of Education, may be supported by state funds.

“Amended Substitute House Bill 856, effective October 11, 1961, in addition to enacting Sections 3304.01 to 3304.05, inclusive, of the Revised Code, amended Section 4141.29, Revised Code for the purpose of allowing an individual to remain eligible to receive unemployment compensation benefits even though such individual is attending a vocational training course provided such training course has been approved by the Ohio Worker Training Committee. Also, as you know, your Informal Opinion No. 473, dated

May 17, 1962, held that 'The committee may not supervise programs of private schools through the Division of Vocational Education' and further that 'The Ohio worker training committee may not pay state funds to a private school to reimburse said school for amounts expended in training courses for unemployed workers.' In view of these limitations upon the authority of the committee to supervise and finance training programs, the committee is anxious to determine the extent of its authority to approve training courses as is contemplated by the provisions of Section 4141.29 (A) (4), Revised Code as amended effective October 11, 1961.

"I am, therefore, in accordance with the wishes of the members of the Ohio Worker Training Committee, hereby requesting your written opinion on the following questions.

"1. Does the Ohio Worker Training Committee have authority to approve training courses even though such courses may not be financed by state funds?

"2. Does the Ohio Worker Training Committee have authority to approve training courses even though such courses may not be financed, assisted, or supervised by the committee?"

"This problem involves not only the question of whether private schools such as secretarial, business and barber schools may be approved, but it also involves the question of whether programs may be approved which are being developed under the expanding number of Federal programs such as the Manpower Developing and Training Act, the Area Redevelopment Act and the Trade Redevelopment Act."

Section 4141.29, Revised Code, as amended by the 104th General Assembly, Amended House Bill No. 856, and effective October 11, 1961, provides in pertinent part:

"Each eligible individual shall receive benefits as compensation for loss of remuneration due to total or involuntary partial unemployment in the amounts and subject to the conditions stipulated in sections 4141.01 to 4141.46, inclusive, of the Revised Code.

"(A) No individual is entitled to a waiting period or benefits for any week unless he:

"* * * * *

"(4) Is able to work and is both available for suitable work and making such efforts to obtain suitable work as the administrator may require, considering, along with other pertinent factors, his chances of returning to his previous work, the methods by which an individual in his occupation normally obtains work, the length of his unemployment, and the specific conditions of employ-

ment and unemployment prevailing in his locality; *provided, that an individual who is attending a vocational training course, approved by the Ohio worker training committee, meets the requirement of this division, if such attendance was recommended by the administrator and the individual is regularly attending the course, and is making satisfactory progress, and provided, that under these circumstances such individual shall be required to seek and accept suitable work which will not interfere with such training course.*

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(Emphasis added)

Section 3304.04, Revised Code, pertaining to worker training programs, reads:

“(A) The Ohio worker training committee shall devise and assist in the establishment of programs of training for unemployed workers of limited job skills and programs of retraining for unemployed workers with job skills which have become obsolete and which skills for which retraining is provided have a definite use in the economy of the area. The division of vocational education of the department of education, under the superintendent of public instruction, shall conduct or supervise such programs. Programs conducted or supervised under this division may be fully supported by state funds.

“(B) The committee shall promote and encourage the development of unemployed worker training programs by local governments, business and industrial groups, and labor organizations. The committee shall assist such groups in the establishment and conduct of such training programs and shall act as a center for the collection and exchange of information regarding such training programs.

“(C) On January 15, 1963, and biennially thereafter, the committee shall report to the governor and the general assembly the results obtained from its activities and shall further report on the extent to which technological or other changes in business and industry have affected employment in this state. The committee shall, as part of its report, recommend long-range programs for the training and retraining of unemployed workers and methods for financing such training programs, and shall recommend legislation necessary to effectively continue and improve such programs.”

In Informal Opinion No. 473, issued on May 17, 1962 at your request, the authority of the Ohio Training Committee under Sections 3304.01 to 3304.05, Revised Code, is fully discussed. In the second paragraph of conclusions I arrived at in that opinion, it is stated:

“2. The Ohio Worker Training Committee lacks authority to supervise educational or training programs conducted by private schools; however, under division (B) of Section 3304.04, Revised Code, where private business and industrial groups and labor organizations have established unemployed worker training programs, the committee may provide such groups with assistance.”

Actually, there is no provision of law stating that the Ohio Worker Training Committee shall approve programs. In order to give meaning to the above noted pertinent provision of Section 4141.29, however, it appears that the power to approve must be implied. Obviously, if the program is one which has been started under division (A) of Section 3304.04, Revised Code, it must be an approved program, since the Committee devised and assisted in its creation. The question thus arises whether or not the Committee is authorized to approve vocational training courses other than those that are being conducted and supervised by the Division of Vocational Education of the Department of Education, bearing in mind that such committee lacks the authority to supervise such other vocational training courses.

I note that under division (B) of Section 3304.01, Revised Code, the committee in question is required to encourage and promote the expansion of training and retraining programs and facilities on the part of local boards of education and *local committees* for the purpose of assisting unemployed persons to improve their work skills and employment opportunities. Such committee is further required to coordinate and *assist such activities throughout the state* by the collection and dissemination of information, conduct of research and study products, and by furnishing local boards and committees with consulting services.

It is quite likely that when the vocational retraining program gets into full swing, the number of persons who need such training or retraining may be so great that all could not be served by programs set up and conducted by the Division of Vocational Training of the Department of Education. Still, should it be assumed that only the trainees enrolled in such programs could benefit by the provision under Section 4141.29 (4), Revised Code, the very purpose of the program as a whole would be placed in jeopardy. Clearly, any training program carried on under the auspices of private or public groups with the encouragement of the Committee would be hamstrung to begin with, since the unemployed enrolled in such program would be required to break off the training and return to work,

without completion of training, as soon as work was available. The spirit and apparent intent of the legislation involved seems, therefore, to support the view that the Committee is authorized to approve training courses that are not financed by state funds, and that such is also the case as regards training courses which are not assisted, or supervised by the committee. Such conclusion is fortified by the language of Division (D) of Section 3304.02, Revised Code, where it is stated in part:

“* * * The committee shall have *such other powers as are necessary* for the accomplishment of its functions and purposes.”
(Emphasis added)

It cannot be doubted, I think, that the authority to approve vocational training courses, expressly granted to the Committee under Section 4141.29, *supra*, is a necessary power, bereft of which the Committee would be seriously, probably fatally, handicapped in the pursuit of the purposes for which it had been created. If the objection were raised, that the Legislature failed to set up a standard for the approval or disapproval of the training courses here concerned, such objection would fall in the light of the well settled constitutional doctrine that discretionary powers may be properly lodged in administrative officers in a situation where a fixed standard cannot be adopted. As stated in *Union Bridge Co. v. Uited States*, 204 U. S. 364, 387, 27 S. Ct. 367, 51 L. Ed. 523:

Respectfully,

MARK MCELROY
Attorney General