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- I. METROPOLITAN HOUSING AUTHORITIES—NOT INCLUDED IN TERM “THE STATE AND EACH COUNTY, CITY, TOWNSHIP, INCORPORATED VILLAGE AND SCHOOL DISTRICT THEREIN”—CLASS OF EMPLOYERS WHO MAY CONTRIBUTE TO “PUBLIC FUND” OF WORKMEN’S COMPENSATION FUND— MAY NOT CONTRIBUTE TO FUND—SECTION 1465-60 PARAGRAPH 1, G. C.

2. METROPOLITAN HOUSING AUTHORITIES—INCLUDED IN TERM “ANY PUBLIC SERVICE CORPORATION”—MUST HAVE IN SERVICE THREE OR MORE WORKMEN OR OPERATIVES—REGULARLY EMPLOYED IN SAME BUSINESS OR IN OR ABOUT SAME ESTABLISHMENT UNDER ANY CONTRACT OR HIRE, EXPRESS OR IMPLIED, ORAL OR WRITTEN—SECTION 1465-60, PARAGRAPH 2 G. C.

## SYLLABUS :

1. Metropolitan Housing Authorities are not included in the term “the state and each county, city, township, incorporated village and school district therein” as used in Section 1465-60, paragraph 1, General Code, defining the class of employers who may contribute to the “public fund” of the workmen’s compensation fund, and hence may not contribute to such fund.

2. Metropolitan Housing Authorities are included in the term “any public service corporation” as used in Section 1465-60, paragraph 2, General Code, providing they have in their service three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract or hire, express or implied, oral or written.

Columbus, Ohio, January 24, 1950

The Industrial Commission of Ohio  
Columbus, Ohio

Gentlemen :

I have your letter in which you request my opinion on the following facts:

“Certain Metropolitan Housing Authorities in fourteen Ohio communities have petitioned the Industrial Commission of Ohio to classify such authorities as public employers under paragraph 1 of Ohio General Code Section 1465-60.

“For your information, these several authorities are organized and conducted under authority of Section 1072-29, et seq. Ohio General Code. Your attention is also respectfully directed to Ohio General Code Section 1465-59 and to 1939 Opinions Attorney General, No. 849. The decision in the case of Industrial Commission vs. Shaner, 127 O. S. 366, at page 369, may also be examined.

“Your opinion is respectfully requested as to whether each of said petitioning housing authorities is a public employer, prop-

erly classified under paragraph 1 of Section 1465-60, Ohio General Code, or whether such employer is a private employer properly classifiable under paragraph 2 of Section 1465-60 Ohio General Code.”

It is noted in your request that reference was made to “Section 1072-29 et seq., Ohio General Code,” however, said sections relate in no way to housing. Section 1078-29 et seq. of the General Code of Ohio are known as the housing authority laws. The great length and complexity of the sections authorizing Metropolitan Housing Authorities make it expedient for the greater part that the contents of such sections be summarized here rather than repeated in completed text.

Section 1078-30 of the General Code states the purpose of the housing authority law in the following words:

“In order to make necessary provision for the preservation of the public health, morals, safety and welfare, and in order to facilitate and provide proper sanitary housing conditions and accommodations for families of low incomes, and to provide for the elimination of congested and unsanitary housing conditions now existing in certain slum areas of the state which are a menace to health, safety, morals and public welfare, it is expedient to create the public authorities hereinafter provided for with the powers and duties hereinafter enumerated.

The same section continues to provide that whenever the state board of housing shall have determined that there is need for a housing authority in certain areas as specified in the statute, a copy of a resolution of that body declaring the existence of a housing authority, shall be sent to each of the following: the probate court, common pleas court, the board of county commissioners and the mayor of the most populous city in the territory covered by the authority. Each of the above is authorized to appoint one member of the housing authority, except the mayor who is authorized to appoint two members, all of whom serve without compensation. A housing authority so organized is authorized by Section 1078-31 of the General Code to appoint counsel and employees and fix their term of office and compensation. The succeeding section, Section 1078-32, General Code, forbids any member of the authority or its employees to have any interest in contracts for property, materials or services to be acquired by said authority.

The county commissioners of the county in which the housing authority is situated are given the power, by Section 1078-33, General Code, to loan money not exceeding 20,000.00 for the purpose of paying expenses of organizing and supervising the work of the authority during the period of initial construction of the proposed projects. Sections 1078-34, 1078-34a and 1078-35, General Code, contain grants of power to the housing authority, which constitutes a housing authority a "body corporate and politic" with power to sue and be sued, to have corporate succession, to receive grants, to conduct examinations and investigations and for that purpose to subpoena and require the attendance of witnesses, to issue commissions for the examination of witnesses not in attendance before the authority and to administer oaths, to determine what constitutes slum areas and undertake to provide housing projects for such areas, and for that purpose to acquire land and property, to borrow money and to exercise the power of eminent domain.

Section 1078-36 of the General Code provides as follows:

"All property, both real and personal, acquired or owned by the housing authority and used for the purposes of exercising the powers set forth in the housing authority law shall be public property used exclusively for a public purpose within the meaning of Article XII, section 2, of the constitution, and shall be exempt from all taxation, and all accounting and other transactions of the authority shall be subject to the inspection and approval of the bureau of inspection and supervision of public offices of the state of Ohio, which shall transmit its report to the state board of housing."

Other sections of the General Code govern, among other things, the letting of contracts on bids, expenditures, the manner of operation of property, the issuance of bonds and the investment of funds of such housing authorities.

After having examined the statutes authorizing the creation of Metropolitan Housing Authorities and which give to such authorities their powers and duties, it now becomes necessary to examine the workmen's compensation laws in furtherance of your questions propounded. Said law is covered in Sections 1465-37 to 1465-118, inclusive, of the General Code, the pertinent sections being as follows:

Section 1465-59:

*"The money contributed by the employers mentioned in subdivision one of section 1465-60 shall constitute and be called*

*the public fund* and the money contributed by employers mentioned in subdivision two of section 1465-60 shall constitute and be called the private fund and each such fund shall be collected, distributed and its solvency maintained without regard to or reliance upon the other. Whenever in this sub-chapter reference is made to the state insurance fund, such reference shall be construed to have been made to such two separate funds. Nothing herein shall prevent the deposit or investment of all such moneys intermingled for such purpose but such funds shall be separate and distinct for all other purposes and the rights and duties created in this sub-chapter shall be construed to have been made with respect to two separate funds and so as to maintain and continue such funds separately except for deposit or investment. Disbursements shall not be made on account of injury, disease or death of employes of employers who contribute to one of such funds unless the moneys to the credit of such fund are sufficient therefor, and no such disbursements shall be made for moneys or credits paid or credited to the other fund.” (Emphasis added.)

Section 1465-60:

“The following shall constitute employers subject to the provisions of this act:

“1. The state and each county, city, township, incorporated village and school district therein.

“2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written. Any member of a partnership, firm or association, who regularly performs manual labor in or about a mine, factory or other establishment, but not including a household establishment, shall be considered a workman or operative in determining whether or not such person, firm, or private corporation, or public service corporation has in its service three or more workmen. The income derived from such labor shall be reported to the commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employe as defined in this act.”

Section 1465-61:

“The term ‘employee,’ ‘workman’ and ‘operative’ as used in this act shall be construed to mean:

“1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police

and fire departments of cities and villages, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, except any elected official of the state, or of any county, city, township, or incorporated village, or members of boards of education. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds.

"2. Every person in the service of any person, firm or private corporation, including any public service corporation, employing three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or hire, express or implied, oral or written, including aliens and minors, but not including any person whose employment is but casual and not in the usual course of trade, business, profession or occupation of his employer. \* \* \*"

Section 1465-63:

"The amount of money to be contributed by the state itself and each county and each taxing district within each county shall be determined by the industrial commission of Ohio. In fixing the amount of contribution to be made by the county, for such county and for the taxing districts therein, the industrial commission of Ohio shall classify counties and other taxing districts into such groups as will equitably determine the contributions in accordance with the relative degree of hazard, and shall also merit-rate such individual counties, taxing districts or groups of taxing districts in accordance with their individual accident experience so as ultimately to provide for each taxing subdivision contributing an amount sufficient to meet its individual obligations and to establish a solvent public fund by January 1, 1942, and thereafter to maintain such solvent fund.

“A tuberculosis hospital, children’s home, or other such public institutions or any other public activity maintained or operated by two or more counties or parts of counties shall be considered, for the purpose of this act, as a county.”

In the case of *State ex rel vs. Industrial Commission*, 139 O. S. 303, at page 305 the court said:

“Section 1465-59, General Code, provides that the moneys contributed by the employers named in Section 1465-60, subdivision 1, General Code, those being ‘the state and each county, city, township, incorporated village and school district therein,’ shall constitute and be called the public fund, and that the money contributed by such employers to this fund shall be collected, distributed and its solvency maintained without regard to or reliance upon the money in the so-called private fund, i. e., composed of contributions made by private employers.”

It is true that a metropolitan housing authority has the attributes of a public agency, but Section 1465-63, *supra*, cannot be ignored when it provides specifically for contributions to the workmen’s compensation fund by state and subdivisions, the subdivision being each county and each taxing district. The legislature was very clear when it further said that “a tuberculosis hospital, children’s home, or other such public institution or any other public activity maintained or operated by two or more counties or parts of counties, shall be considered, for the purpose of this act, as a county.” The housing authority law makes it equally clear that such activity is not maintained by the county or counties. Is it a taxing district within a county? Section 5625-1 of the General Code provides in part as follows:

“The following definitions shall be applied to the terms used in this act:

\* \* \* “(i) ‘Taxing unit’ shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including conservancy districts, metropolitan park districts, sanitary districts, road districts and other districts.

“(j) ‘District authority’ shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of

district tuberculosis hospitals and district children's homes, district board of health and other boards."

It thus becomes apparent that such authority may not contribute to the public fund and it necessarily follows, therefore, that such authorities are not employers within the meaning of Section 1465-60, subdivision 1, supra.

Are such authorities employers within the meaning of subdivision 2 of Section 1465-60, supra? In Words and Phrases, Vol. 9, p. 717, it is said:

"A 'body politic or corporate,' as defined by Lord Coke, 'is a body to take in succession, framed as to its capacity by policy, and therefore is called by Littleton 'a body politic'; and it is called a 'corporation' or 'body corporate' because the persons are made into a body, and are of capacity to take, grant, etc., by a particular name.'"

It is further said in Words and Phrases, Vol. 35, at page 341:

" 'Public service corporations' or 'quasi public corporations' are private corporations which have an appropriate franchise from the state to provide for a necessity or convenience of the general public incapable of being furnished through the ordinary channels of private competitive bidding and dependent for its exercise upon eminent domain or some agency of government.'"

In the case of Columbus Metropolitan Housing Authority, appellee vs. Simpson, et al., appellants, 85 O. App., 73, at page 74, the court said "the plaintiff is a corporation organized under the laws of the State of Ohio."

In view of the foregoing, and in specific answer to your questions, you are advised that:

1. Metropolitan Housing Authorities are not included in the term "the state and each county, city, township, incorporated village and school district therein" as used in Section 1465-60, paragraph 1, General Code, defining the class of employers who may contribute to the "public fund" of the workmen's compensation fund, and hence may not contribute to such fund.

2. Metropolitan Housing Authorities are included in the term "any public service corporation" as used in Section 1465-60, paragraph 2,

General Code, providing they have in their service three or more workmen or operatives regularly in the same business or in or about the same establishment under any contract or hire, express or implied, oral or written.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.