

1339.

APPROVAL—BONDS OF WORTHINGTON VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$105,000.00.

COLUMBUS, OHIO, October 21, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Worthington Village School Dist.,
Franklin County, Ohio, \$105,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated October 1, 1937, bearing interest at the rate of $3\frac{3}{4}$ % per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1341.

EMPLOYMENT BY MUNICIPAL WATERWORKS OR MUNICIPAL CEMETERIES NOT WITHIN SECTION 1345 (c) (E) (4), GENERAL CODE.

SYLLABUS:

Employment by municipal waterworks or municipal cemeteries does not come within the exemption provided in Section 1345 (c) (E) (4) and is therefore not exempt.

COLUMBUS, OHIO, October 22, 1937.

HON. CHARLES S. LEASURE, *Chairman, The Unemployment Compensation Commission of Ohio, Columbus, Ohio.*

DEAR SIR: I am in receipt of your recent communication wherein you request my opinion as to the status of employes of municipal water-

works departments and municipal cemeteries within the meaning of the Unemployment Compensation Law of Ohio, Sections 1345-1 to 1345-35, inclusive, General Code.

Section 1345-1 (c) (E) (4), provides that the term "employment" shall not include "service performed in the employment of any governmental unit, municipal or public corporation, political subdivision or instrumentality of the United States or of one or more states or political subdivisions in the exercise of purely governmental functions." Therefore the question in your letter is whether or not the employment by municipal waterworks and municipal cemeteries comes within the above quoted exemption.

Recently in Opinion No. 615, rendered under date of May 19, 1937, I had occasion to discuss the general subject of the difference between governmental and proprietary functions of municipal corporations. That opinion was concerned with the distinction in so far as it relates to tort liability, and as there indicated, there is no question but that it is the law in Ohio that in the operation of a waterworks plant a municipality is performing a proprietary function. *Salem vs. Harding*, 121 O. S. 412; 28 O. J. 100, 101. Likewise there is little doubt that in the operation of municipal cemeteries municipalities are also performing proprietary functions. *City of Toledo vs. Conc*, 41 O. S. 149.

As pointed out by the Supreme Court of the United States in the case of *Brush vs. Commissioners*, 81 L. Ed. 443, the decisions relating to what constitutes a governmental or proprietary function in the field of tort liability are not entirely authoritative in a consideration in other fields where it is necessary to make the distinction. Happily we are not forced to rely entirely upon the above authorities, as Section 1345-33 of the Unemployment Compensation Act provides in the second paragraph.

* * * * *

This act shall be liberally construed to accomplish the purposes thereof."

In Section 1345-34 the purposes of the Unemployment Compensation Act are stated as follows:

"This act is enacted as a part of a national plan of unemployment compensation and social security, and for the purpose of assisting in the stabilization of employment conditions. * * *"

Certainly the purposes as above stated of assisting in the stabilization of employment conditions will be furthered if the Act covers a

larger percentage of all employes in the state rather than a smaller one. In order to give effect to the mandate of the legislature to construe the act literally to effectuate the purposes, I believe the exemptions should be strictly construed. In this instance, the legislature has given us a further guide in the wording of the statute wherein the exemption is limited to the employment * * * "in *purely* governmental functions." The use of the word "purely" indicates an intention by the legislature that the exemption should only apply to those employments where there is no question but that it is in employment by a governmental agency performing a governmental function.

In specific answer to your inquiry therefore, it is my opinion that employes of municipal waterworks and municipal cemeteries do not come within the exemption set forth in Section 1345 (c) (E) (4), General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1340.

APPROVAL— BONDS OF VILLAGE OF UPPER ARLINGTON.
FRANKLIN COUNTY, OHIO, \$90,000.00.

COLUMBUS, OHIO, October 22, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Village of Upper Arlington, Franklin
County, Ohio, \$90,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of street and sewer improvement, special assessment, bonds in the aggregate amount of \$127,517.94, dated October 1, 1937, bearing interest at the rate of $3\frac{1}{4}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said village.

Respectfully,

HERBERT S. DUFFY,
Attorney General.