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1. EMPLOYEE, STATE OF OHIO—MAY NOT TAKE PART OF COMPENSATION IN MAINTENANCE—WHERE MAINTENANCE FURNISHED TO EMPLOYEE AND ACCEPTED THE STATE MUST BE PAID AN AMOUNT EQUAL TO REASONABLE COST THEREOF—SECTION 486-7b G. C.
2. STATE EMPLOYEES CAN NOT BE REQUIRED TO TAKE STATE SERVED MEALS DURING HOURS OF EMPLOYMENT IF THEY DO NOT SO DESIRE—REASONABLE RULES AND REGULATIONS SHALL BE COMPLIED WITH AS TO WHERE AND WHEN EMPLOYEES SHALL EAT MEALS THEY CARRY.

SYLLABUS:

1. An employe of the state of Ohio, within the purview of Section 486-7b of the General Code, may not take part of his or her compensation in maintenance, but where same is furnished to and accepted by such employe, the State must be paid an amount equal to the reasonable cost thereof.

2. State employes, within the purview of Section 486-7b, General Code, can not be required to take state served meals during the hours of their employment if they do not desire same. However, reasonable rules and regulations as to where and when the employes shall eat meals which they carry, shall be complied with by such employes.

Columbus, Ohio, August 21, 1950

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 486-7b of the General Code reads in part, as follows:

‘ * * * that salary and wage ranges are based upon full-time service by the employe and represent gross amounts; and if meals, lodging, laundry, or other personal services are furnished employes the reasonable costs thereof shall be paid by the employes receiving the same in such manner as may be provided by the particular department or institution involved.’

Under authority of the provisions of this Section, the Department promulgated Executive Order No. 22, a copy of which is attached.

In promulgating these rules, the Department assumed that it had authority to continue in effect the furnishing of the same maintenance as part of the compensation of an employe after January 1, 1950, as the employe was receiving prior to said date.

In order to be certain as to the validity of these rules, we request your opinion at the earliest possible date on the following :

1. If an employe was employed prior to January 1, 1950, and as a condition of his employment he was required to take part of his compensation in maintenance, can the Department continue such contract of employment as to receiving maintenance under the present provisions of law?

2. As to employes employed after January 1, 1950, may the Department require an employe to take one or more meals per day at the institution, which are served during working hours, as a condition of his employment?

Prior to January 1, 1950, nearly all institutional employes received one or more meals per day at the institution, which were served during the time they were on duty, as part of their compensation. We can not discontinue the practice of serving meals because :

1. Many of the employes live on the institutional grounds.

2. Most of the institutions are located in places where meals outside of the institution are not available.

Most employes now eat their meals during their hours of employment, and necessity demands that they can not leave the institution during such a period. Permitting employes to bring meals into an institution from the outside, in many instances, would be dangerous and unsanitary."

Section 486-7b, General Code, sets up the pay range for state employes in accordance with their job classification and applies to all employes working for the state except those specifically excluded by Section 486-7a.

The first paragraph of Section 486-7b reads in part as follows :

"All employes working for the state of Ohio or any of the several departments, commissions, bureaus, boards or councils of the state of Ohio, except those specifically excluded in Section 486-7a of the General Code, shall be paid a salary or wage in

accordance with one of the following pay ranges, set up in monthly amount, to-wit: * * * ”

The above language is so clear and unambiguous that it does not require, neither does it permit, interpretation. It is a readjustment of salaries of state employes on what is deemed to be an equitable basis. It applies to all employes except those excluded, regardless of their past conditions of employment or when they were employed.

The fourth paragraph of said Section 486-7b reads as follows:

“The above salary and wage ranges are based upon full-time service by the employee and represent gross amounts; and if meals, lodging, laundry or other personal service are furnished employees, the reasonable costs thereof shall be paid by the employes receiving the same in such manner as may be provided by the particular department or institution involved.”

This clearly appears to me that the legislature intended to make it unlawful for such employes to receive, as part of their salaries or wages, meals, lodging, laundry or other personal services. On the other hand, it just as clearly provides that when it is reasonable and necessary for any of such employes to properly function on their jobs, to be furnished meals, lodging, laundry and other personal services by the state, they be required to pay the state for the reasonable costs thereof. This in no manner has anything to do with the employe's salary. It is not to be deducted therefrom. It merely means as is clearly stated that they pay the reasonable costs thereof if and when furnished by the state and taken by the employe. The question of what meals the employes are required to take or whether or not they may or may not carry their own lunch and eat same on the premises is one which must be worked out between the state authority and the employe. However, I am unable to read into the law any provision requiring that a state employe in any instance accept and pay for state served meals as a condition of his employment.

Therefore, in specific answer to your first question, it is my opinion, and I so advise, that regardless of when an employe, within the purview of Section 486-7b of the General Code, is employed by the state, such employe shall not be furnished maintenance as a part of his or her compensation, but such employe shall be required to pay for the reasonable cost thereof when same is furnished by the state and accepted by such employe.

Your second question reads as follows :

“As to employes employed after January 1, 1950, may the Department require an employe to take one or more meals per day at an institution, which are served during working hours, as a condition of his employment?”

The answer to this question, it seems to me, must be approached with good common sense. It is quite obvious that a condition of employment requiring an employe to remain on the premises during certain hours and that he be at certain places at certain times is not unreasonable. To say, however, that an employe shall be required to eat or pay for state cooked or furnished meals if he does not desire same might well be considered unreasonable. If the state meals are furnished in a dining room and the employe desires, probably because of diet or particular taste, to bring his lunch, it might well be considered unreasonable to prohibit him from carrying his own lunch and eating it in such dining room. Since such meals must be furnished at reasonable cost, and I interpret this to mean reasonable cost to the state, I presume when so furnished few employes would refuse to take same if otherwise satisfactory. The time of his employment, as stated in my answer to your first question, has nothing whatever to do with such arrangement. There may be circumstances where it would almost be essential for an employe to take meals furnished by the state. That, however, must be worked out by the authority in charge and the employe, again, with the application of good common sense, and if so furnished and eaten by the employe, he shall be required to pay the reasonable cost thereof.

Therefore, in repetition and recapitulation, it is my opinion that, regardless of the state and original conditions of employment, an employe of the State of Ohio, within the purview of Section 486-7b of the General Code, may not take part of his or her compensation in maintenance, but where same is furnished to and accepted by such employe, the state must be paid an amount equal to the reasonable cost thereof.

I am further of the opinion that regardless of the date of employment, a state employe, within the purview of Section 486-7b, can not be required to take state served meals during the hours of his employment if he does not desire same. However, reasonable rules and regulations as to where

and when the employe shall eat meals which he carries, shall be complied with by such employes.

Respectfully,

HERBERT S. DUFFY,
Attorney General.