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1. SALARY AND WAGE INCREASES FOR STATE EMPLOYEES—AMENDED HOUSE BILL 484, 96, GENERAL ASSEMBLY—EFFECTIVE OCTOBER 11, 1945.
2. STATUS, STATE EMPLOYEES WHO RECEIVED ANNUAL SALARY INCREASES BETWEEN JUNE 30, 1944 AND DECEMBER 31, 1944—AMOUNT DEDUCTED—ENTITLED TO HAVE AMOUNTS NOT IN EXCESS OF \$240.00 PER ANNUM RESTORED—AMENDED SENATE BILL 1, 96, GENERAL ASSEMBLY.

## SYLLABUS:

1. The provisions of Amended House Bill No. 484 of the 96th General Assembly, which prescribe salary and wage increases for the state employes defined as such therein, become effective on October 11, 1945.

2. All state employes, as defined in the salary and wage adjustment provisions of said act who are or were in the service of the state during the years 1945 and 1946, or any part thereof, and who by reason of having received between June 30, 1944 and December 31, 1944, increases in the annual salaries received by them on June 30, 1944, have had the amount of such increases deducted from the amount of salary increases granted to them under Amended Senate Bill No. 1 of the 96th General Assembly, are entitled to have restored to them, upon the effective date of said Amended House Bill No. 484, such amounts not in excess of \$240 per annum, which were deducted subsequent to January 1, 1945.

Columbus, Ohio, July 27, 1945

Hon. Joseph T. Ferguson, Auditor of State  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads:

“Amended House Bill No. 484, line 5876, provides that:

‘Commencing January 1, 1945, the annual salaries and wages of all employes in the service of the state within such offices, departments, boards and commissions shall be increased as hereinafter provided, whether such employes were appointed prior or subsequently to January 1, 1945.’

In view of the above provisions, I respectfully seek your opinion (1) as to whether an employe of the State of Ohio who received an increase in base pay between June 30, 1944 and December 31, 1944, which increase was deducted from Salary and Wage Adjustment under Amended Senate Bill No. 1, may receive the amount so deducted retroactive from January 1, 1945?

Should your opinion to (1) be in the affirmative, would this also apply to former state employes who were so affected, who have left the service of the State of Ohio between January 1, 1945 and this date?"

Amended Senate Bill No. 1 of the 96th General Assembly, entitled "An act to make partial appropriations for the period beginning January 1, 1945 and ending June 30, 1945," became effective on January 5, 1945. Contained in said act were the so-called "salary and wage adjustment provisions," which prescribed certain salary and wage increases for all state employes defined as such therein. Said provisions read in part:

"Commencing January 1, 1945, the annual salaries and wages of all employes in the service of the state within such offices, departments, boards and commissions shall be increased as hereinafter provided, whether such employes were appointed prior or subsequent to the effective date of this act. \* \* \*

\* \* \* provided further that any employe who, between June 30, 1944, and December 31, 1944, received an increase in the annual salary he was receiving on the former date exclusive of any increase he may have then been receiving by reason of the salary and wage adjustment provisions of House Bill No. 227 of the 95th General Assembly, shall receive only the difference resulting when the amount by which his such salary was so increased is subtracted from the aggregate amount of the increases prescribed herein applicable to his case, all of which increases shall in no event exceed Nine Hundred Dollars (\$900.00) per annum."

Under Amended House Bill No. 484 of the 96th General Assembly (the biennial appropriation act for the years 1945 and 1946), the above provisions were amended to read as follows:

"Commencing January 1, 1945, the annual salaries and wages of all employes in the service of the state within such offices, departments, boards and commissions shall be increased as hereinafter provided, whether such employes were appointed prior or subsequent to January 1, 1945.

\* \* \* provided further that any employe, who, between June 30, 1944, and December 31, 1944, received an increase in excess of Two Hundred Forty Dollars (\$240.00) in the annual salary he was receiving on the former date exclusive of any increase he may have been receiving by reason of the salary and wage adjustment provisions of House Bill No. 227 of the 95th General Assembly, shall receive only the difference resulting when the amount by which his such salary was so increased in excess of Two Hundred Forty Dollars (\$240.00) is subtracted from the aggregate amount of the increases prescribed herein applicable to his case, all of which increases shall in no event exceed Nine Hundred Dollars (\$900.00) per annum."

Said Amended House Bill No. 484, which was passed by the General Assembly on June 28, 1945, signed by the Governor on July 12, 1945 and filed in the office of the Secretary of State on July 12, 1945, provides in section 13 thereof :

"Senate Bill No. 1, entitled 'An act to make partial appropriations for the period beginning January 1, 1945, and ending June 30, 1945, and to declare an emergency,' is hereby repealed, such repeal to be effective as to each appropriation therein made immediately upon the taking effect of any appropriation for the same purpose made in this act."

Therefore, upon the effective date of the salary and wage adjustment provisions of said act, those contained in Amended Senate Bill No. 1 will no longer be in effect. Consequently, we are concerned at the outset with the question of when that part of Amended House Bill No. 484, which provides for salary and wage increases, becomes effective.

Section 1c of Article II of the Constitution of Ohio, whereunder the right of referendum is granted, provides :

"\* \* \* No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the Secretary of State, except as herein provided."

The exception referred to obviously relates to the following provision contained in section 1d of Article II :

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect."

In order to provide for the payment of certain of the salary and wage increases prescribed by both Amended Senate Bill No. 1 and Amended House Bill No. 484, there was appropriated in said latter act for the biennium 1945 and 1946, the sum of \$11,600,000. Obviously, such appropriation is for current expenses of state government and state institutions, and consequently the terms of the act making such appropriation go into immediate effect. From this it does not follow, however, that that portion of the act set out in the salary and wage adjustment provisions thereof, which prescribes increases in the salaries and wages of state employes and provides for the manner in which the moneys appropriated shall be expended, goes into immediate effect. It will be observed that the Constitution provides that "laws providing for \* \* \* appropriations for the current expenses of state government and state institutions" shall go into immediate effect. It is the law which provides for such appropriations which becomes effective immediately and not the provisions of the act which relate thereto.

In *State, ex rel. v. Forney*, 108 O. S. 463, the Supreme Court had before it a question similar in nature to that presented herein. In said case the interpretation of the term "Laws providing for tax levies," as the same appears in section 1d of Article II of the Constitution, was under consideration. In all other respects the question was identical to ours. Here we are concerned with the language which appears in the same sentence and refers to "Laws providing for appropriations, etc." In said case it was held:

"The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonymous with laws 'relating' to tax levies, or 'pertaining' to tax levies, or 'concerning' tax levies, or any agency or method provided for a tax levy by any local subdivision or authority."

In the opinion of the court delivered by Wanamaker, J., it was declared (pages 467 and 478):

"It is the contention that the words 'laws relating to the levy of taxes,' are substantially the same as 'laws providing for the levy of taxes,' but it is self-evident that the word 'relating,' and its synonyms, 'pertaining to' or 'concerning,' are much broader, much more comprehensive, than the word 'provide,' and are so used in common conversation. A law 'relating to the levy of taxes' might merely create a new public purpose for taxes, might

change the body that would be authorized to make such a levy, or might change the rates which such body might impose when actually making the levy; but it would be a strange and strained contention to hold that any such act 'provided for the tax levy.'

But there is another rule that would forbid liberal extension of the words 'providing for tax levies' to such extent and degree as contended for by relator, and that is the well-known rule pertaining to exceptions to a general law or class. The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law.

In view of the great precaution taken by the constitutional convention of 1912 to set forth and safeguard, with the particularity of detail usually found only in legislative acts, the right of referendum, and the three exceptions thereto, our court should not deny the people that right, unless the act in question is plainly and persuasively included within one of the three classes excepted from the operation of the referendum."

In connection herewith, it is also pointed out that the General Assembly in enacting Amended Senate Bill No. 1 attached thereto an emergency clause, which reads as follows:

"Section 12. This act is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that the taking effect of said portion of this act which provides for salary and wage increase at the earliest possible time will afford immediate salary and wage adjustment to the employees of the state in conformity to cost of living standards due to war conditions. Therefore this act shall go into immediate effect."

From this it is evident that the General Assembly did not consider the salary and wage adjustment provisions of Amended Senate Bill No. 1 as going into immediate effect, even though in connection with such provisions there was, as is the case of Amended House Bill No. 484, an appropriation made for the payment of certain of the salary and wage increases prescribed therein.

In view of the above, it is scarcely conceivable how the salary and wage adjustment provisions of Amended House Bill No. 484 can be regarded as a law providing for an appropriation for the current expenses

of the state government, and consequently such provisions will not become effective until the expiration of ninety days after said act was filed in the office of the Secretary of State and accordingly the provisions of Amended Senate Bill No. 1, prescribing salary and wage increases, will remain in full force and effect until such time.

I come now to a consideration of the question concerning the retroactive operation of the salary and wage adjustment provisions of Amended House Bill No. 484.

In regard thereto, it will be noted that said act provides "commencing January 1, 1945, the annual salaries and wages of all employes \* \* \* shall be increased as hereinafter provided \* \* \*."

Thereafter, such act provides that any employe who between June 30, 1944, and December 31, 1944, received an increase in excess of \$240 in the base annual salary he was receiving on the former date shall have such excess deducted from the increases provided for in the act.

Here the General Assembly has manifested in plain and unequivocal language its intention to increase the salaries and wages of state employes in accordance with the provisions of the act, commencing January 1, 1945. The intention of the General Assembly is not left to inference or construction, but is expressed in plain and unambiguous language which conveys a clear and definite meaning. To hold, in the face of such language that the salary and wage increases prescribed in the act are applicable only to the remainder of the biennium following the effective date of the salary and wage adjustment provision thereof, would certainly do violence to a legislative intent, clearly expressed.

I am fully aware of the fact that courts should indulge the presumption that the Legislature intended statutes enacted by it to operate prospectively, rather than retrospectively. However, such general rule has no application where a law as in the instant case is retroactive in terms, and permits, by no possibility, any other construction.

You also asked to be informed as to whether former state employes who left the state service subsequent to January 1, 1945, are entitled to the benefits of the salary and wage adjustment provisions of Amended House Bill No. 484.

Having concluded that such provisions are retroactive to January 1, 1945, it follows that they would be applicable to any state employe, defined as such therein, who was in the service of the state on said date or subsequent thereto, whether or not such employe is presently in the state employ.

You are therefore advised that in my opinion :

1. The provisions of Amended House Bill No. 484 of the 96th General Assembly, which prescribe salary and wage increases for the state employes defined as such therein, become effective on October 11, 1945.

2. All state employes, as defined in the salary and wage adjustment provisions of said act who are or were in the service of the state during the years 1945 and 1946, or any part thereof, and who by reason of having received between June 30, 1944, and December 31, 1944, increases in the annual salaries received by them on June 30, 1944, have had the amount of such increases deducted from the amount of salary increases granted to them under Amended Senate Bill No. 1 of the 96th General Assembly, are entitled to have restored to them, upon the effective date of said Amended House Bill No. 484, such amounts not in excess of \$240 per annum, which were deducted subsequent to January 1, 1945.

Respectfully,

HUGH S. JENKINS

Attorney General