

2013.

APPROVAL—BONDS CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$3,000.00, PART OF ISSUE DATED APRIL 1, 1929.

COLUMBUS, OHIO, March 4, 1938.

*Retirement Board, State Public School Employes' Retirement System,
Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of City of Akron, Summit County, Ohio,
\$3,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of West Tallmadge Avenue widening bonds, Series 1, in the aggregate amount of \$100,000 of a \$490,000 authorization, dated April 1, 1929, bearing interest at the rate of $4\frac{3}{4}\%$ 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 valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2014.

UNEMPLOYMENT COMPENSATION ACT—WHERE PART-
NERS IN LIMITED PARTNERSHIP USE MONEYS ON A
DRAWING ACCOUNT—SUCH MONEYS NOT WAGES—
PARTNERS NOT EMPLOYES AS TERM IS USED IN OHIO
UNEMPLOYMENT COMPENSATION ACT.

SYLLABUS:

1. *Moneys drawn by partners in a limited partnership by way of a drawing account are not "wages" as that term is used in the Unemployment Compensation Act.*
2. *Partners, in the absence of an agreement, express or implied,*

to render services at a stipulated compensation, are not "employees" as that term is used in the Ohio Unemployment Compensation Act.

COLUMBUS, OHIO, March 5, 1938.

The Unemployment Compensation Commission of Ohio, 33 North Third Street, Columbus, Ohio.

GENTLEMEN :

I am in receipt of your recent communication in which you ask the following questions :

"1. Are drawing accounts of limited partners members of a partnership organized under General Code Sections 8059 to 8073, considered to be wages under the Ohio Unemployment Compensation Law?

2. Are such partners considered to be employees under the Ohio Act and amenable thereto?"

The term "wages" is defined in Section 1345-1 (e) as follows :

"'Wages' means remuneration payable by employers for employment."

As a matter of fact, any amounts drawn by a partner against a drawing account, as such, are chargeable against that partner and constitute indebtedness to the partnership. A partner may draw such money irrespective of whether or not services are rendered therefor. Furthermore, it is fundamental that a partner, in the absence of a specific agreement indicating to the contrary or in extraordinary circumstances implying an understanding, is not entitled to compensation for services rendered as a member of the firm. The courts have even gone so far as to say that this is true regardless of whether or not the services are rendered before or after dissolution. Citing: *Cameron vs. Francisco*, 26 Ohio State 190.

This rule in regard to compensation is true of partners in a limited partnership, as well as in the general partnership. In this regard it is stated in 30 Ohio Journal, page 1193 :

"General partners in a limited partnership have as between themselves the same rights and duties as members of a general partnership."

There is nothing to indicate that in this respect special partners in a limited partnership are on a different footing. The only effect of a special partner drawing money out by way of a drawing account is to

render him liable to the partnership for the money so withdrawn. In other words, the partnership has a claim against such a partner in the amount he has withdrawn by way of a drawing account. General creditors could, as I interpret the Limited Partnership Act, (Sections 8059, et seq. General Code) levy on such indebtedness, as an asset of the partnership.

As pointed out in your letter, the word "wages" is defined in Section 1345-1 (c) as "remuneration payable by employers for employment." In Section 1345-1 (E), the word "remuneration" is defined as follows:

"'Remuneration' means all compensation payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer, shall be treated as wages payable by his employer. The reasonable cash value of compensation payable in any medium other than gratuities, shall be estimated and determined in accordance with rules prescribed by the commission."

It is quite obvious that under the above definitions, drawing accounts cannot be considered as remuneration since money paid to a partner in a limited partnership is not paid as "compensation payable for personal services".

In regard to your second question, it is peculiar that although most of the terms used in the Unemployment Compensation Act are defined, there is no definition in the Act for the term "employee". The only indication is the following passage in Section 1345-1 (b) (1):

"Each individual employed to perform or to assist in performing the work of any agent or employee of an employer shall be deemed to be employed by such employer for all the purposes of this act. * * *"

It is perhaps the only general description of what constitutes an employee in the meaning of the Unemployment Compensation Act.

As pointed out above, a partner in a limited partnership is not entitled to compensation in the absence of a specific agreement therefor for services rendered. Such a partner is one of the employers of the various people being compensated by the partnership association. It is difficult to see how a person could be at one and the same time his own employer, or in other words, employed by himself.

In the recent case of *Goldberg vs. Industrial Commission*, 131 Ohio

State 399, the Supreme Court of Ohio had before it the determination of a question of whether members of a partnership were "workmen" or "employees" as those terms are used in Sections 26 and 35 of Article II of the Constitution of Ohio. Although the issue was not identical with that here under consideration, the decision of the court is helpful as indicative of the legal attitude toward this problem and I, therefore, quote from page 404 of the opinion as follows:

"This Court is clearly of the opinion that a partner-employee is not embraced within the terms 'workmen' and 'employees' as used in Section 35 with its mandatory provision for additional compensation in case of violation of a specific requirement."

Generally speaking, it seems that the term "employee" is used in the Unemployment Compensation Act to indicate an individual who is not the master of his own periods of employment, the main purpose of the Unemployment Compensation Act being, as I understand it, to alleviate the economic pressure occasioned when an employe, through circumstances over which he has no control, loses his employment. If this be true, and I have above indicated that I think it is, a partner would not fit the category of an employe as the term is used in the Unemployment Compensation Act. In the absence of a specific agreement to the contrary, a partner is not subject to the will of another as to whether or not he should continue to render his services for the partnership, there being no contract of employment nor any control over the services rendered.

In specific answer to your questions, therefore, it is my opinion that: (1) Moneys drawn by partners in a limited partnership by way of a drawing account are not "wages" as that term is used in the Unemployment Compensation Act; (2) Partners, in the absence of a specific agreement indicating a contract to render services at a stipulated salary or extraordinary circumstances indicating that the services rendered by a partner are to be compensated on the same basis as other employes, are not "employees" as that term is used in the Ohio Unemployment Compensation Act and are not amenable thereto.

Respectfully,

HERBERT S. DUFFY,

Attorney General.