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1. MUNICIPAL CORPORATION — NOT REQUIRED BY OHIO UNEMPLOYMENT COMPENSATION ACT TO MAKE CONTRIBUTION TO UNEMPLOYMENT COMPENSATION FUND—SECTIONS 1345-1 TO 1345-34 G. C.

2. IF MUNICIPAL CORPORATION MADE CONTRIBUTIONS TO UNEMPLOYMENT COMPENSATION FUND OF OHIO TO COVER CERTAIN EMPLOYES, REFUNDS MAY BE MADE AS PROVIDED BY SECTION 1345-2 (e) G. C.

SYLLABUS:

1. A municipal corporation is not required by the provisions of the present Ohio Unemployment Compensation Act (Sections 1345-1 to 1345-34, both inclusive, General Code) to make contributions to the Unemployment Compensation Fund of Ohio.

2. If a municipal corporation has made contributions to the Unemployment Compensation Fund of Ohio with respect to certain of its employes, refunds may be made as provided in Section 1345-2 (e) of the General Code.

Columbus, Ohio, March 19, 1943.

Bureau of Inspection and Supervision of Public Offices,
State House Annex,
Columbus, Ohio.

Gentlemen:

Your request for my opinion reads:

"We are inclosing herewith a notice issued to the Village of Johnstown dated February 16, 1943, and bearing No. 55126, which is self-explanatory as being a demand upon said Village for the payment of premium to the Ohio Bureau of Unemployment Compensation.

It is our understanding from conversations with members of your staff that municipal corporations are exempt from such payments to the B. U. C. and, in this connection, we note a citation in Bates Compact Ohio Digest, 1941, page 444, which we quote as follows:

'Employes of a municipal corporation even though engaged in a proprietary function, are not included within the provisions of Section 1345-1, et seq., and city is not required to make contri-

butions to the unemployment fund for such employes. State, ex rel. Duffy v. Cleveland, 33 Abs. 331.'

We have also received many complaints from officers of municipal corporations to the effect that the B. U. C. has refused to refund such payments or contributions heretofore made to said Bureau.

In view of these facts may we request your formal opinion in answer to the following questions:

Question 1. Is the Bureau of Unemployment Compensation authorized to demand and receive contributions or premium payments from municipal corporations in this State?

Question 2. If the answer to question No. 1 is in the negative, and municipal employes are not covered by the provisions of Section 1345-1, et seq., of the General Code, should the said Bureau refund to municipal corporations the payments or contributions heretofore made pursuant to demands of the said Bureau?"

An examination of the inclosure mentioned in the first paragraph of your request would indicate that it is but a formal notice and demand of the Bureau of Unemployment Compensation upon the village to pay premiums into the Unemployment Compensation Fund. For such reason I do not believe it beneficial to quote it herein.

The statutes to which you refer in your request are those which are popularly known as the "Unemployment Compensation Act" and are Sections 1345-1 to 1345-34, both inclusive, of the General Code. Section 1345-4 of the General Code provides that each employer shall periodically make contributions into the Unemployment Compensation Fund equal to a certain percentage of the "wages" paid to his "employes", which percentages are specified in detail in the statute but are not material for the purpose of this opinion.

In view of such fact it must be determined whether a municipality is an "employer" within the meaning of that Act and also whether the employes of the municipality are "employes" within the meaning thereof. Section 1345-1 of the General Code, provides in part that:

"The following terms in this act shall be construed as follows (except where the context clearly shows otherwise): * * *

b. (1) 'Employer' means any individual or type of organization including any partnership, association, trust, estate, joint

> stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the local representative of a deceased person who (which) subsequent to December 31, 1936, had in employment three or more individuals at any one time within a calendar year; except for the period from December 21, 1936, to December 31, 1936, both inclusive, the term 'employer' shall mean any person, partnership, firm, association, or corporation, who (which) was subject to the excise tax levied by section 901 of the social security act for the year 1936. 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, whether such individual was hired or paid directly by such employer or by such agent or employees, provided the employer had actual or constructive knowledge of the work. All individuals performing services for an employer of any person in this state, who maintains two or more establishments within this state, shall be deemed to be employed by a single employer for the purpose of this act. * * * "

I do not believe that it will be contended that a municipality is not a "type of organization" or corporation. See Fowler v. Cleveland, 100 O. S. 159; State, ex rel. Forchheimer v. LeBlond, 108 O. S. 41, 56; State, ex rel. Post v. Industrial Commission, 127 O. S. 187.

If, then, a municipality is a corporation, does it have anyone in its "employment" as that term is used in the statutes in question? Section 1345-1 of the General Code defines "employment" generally, for the purposes of such act, as follows:

> " 'Employment' means service * * * , including service performed in interstate commerce, performed for remuneration under any contract of hire, written or oral, express or implied."

and more specifically, as including many of those ordinarily included within the ordinary connotation of such term. Such specific definition or enumeration is quite lengthy and its quotation herein would serve no useful purpose. Also enumerated in such definition are many services which, under ordinary conditions, would be included within the connotation of "employment", but which such definition says are not to be considered as "employment" for the purposes of such act. Most, if not all, of such enumerated exceptions are not pertinent to the questions which are raised by your inquiry. However, it would seem that the following exception is germane to such questions:

> "D. The term employment shall not include: * * *

(4) Service performed in the employ 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; * * * "

Two questions arise by reason of the language above quoted: First, does such language exempt a municipal corporation from compliance with such Act; or, second, does the language above quoted exempt a municipal corporation from compliance with the provisions of such Act only as to those employes who are engaged in purely governmental functions?

As was stated by the Supreme Court in the case of State, ex rel. Merchants' Fire Insurance Co., v. Conn, 110 O. S. 404, 408:

"In interpreting a statute the court will of course give to its language the ordinary and usual meaning and signification, but where the Legislature has interpreted its own language, and has clearly shown that it did not use certain words in their ordinary meaning, a court will accept the Legislature's own interpretation."

It is to be observed that, in the enumeration of the bodies which are exempted from the term "employment" when the service is performed on behalf of such bodies, in the above quoted statutory definition the General Assembly has used the following language:

"Service performed in the employ of any governmental unit, * * *."

Then follows, as though by way of enumeration, the phrase "municipal or public corporation" which is set off by the use of commas. Then follows the phrase *"political subdivision"* which is also set off by the use of commas. Then follows the expression "or instrumentality of the United States or one or more states or *political subdivisions in the exercise of purely governmental functions"*.

It is to be noted that the term "political subdivisions" is used twice in such sub-paragraph. In the latter instance it is followed by the language "in the exercise of purely governmental functions." In the former it is not so followed by such phrase. I have been informed that by reason of the use of such phrase it is contended that municipal corporations are subject to the tax or contributions with respect to wages paid to its employes whose services are used by the municipality in the exercise of its proprietary functions and not to those employes availed of in the exercise of governmental functions.

Governing the interpretation of statutes, the courts have laid down certain rules to be followed in arriving at the supposed legislative intent. Thus, in the first paragraph of the syllabus of State, ex rel. Spira v. Commissioners, 32 O. App. 382, the court held:

> "The purpose of the construction of statute is to ascertain and give effect to the legislative intent, and in doing so court should seek intent, in language employed in statute, giving a full effect to every word used."

Similarly, in the first paragraph of the syllabus of the case of State, ex rel. Brownell v. Industrial Commission, 131 O. S. 124, the court held that:

> "In the construction of a statute no part of the language should be ignored or disregarded."

See also: Harig v. McCutcheon, 23 O. App. 500; Stanton v. Realty Co., 117 O. S. 345, 349.

If we are to adopt a construction that the last phrase of the exception above quoted, that is that the phrase "political subdivisions in the exercise of purely governmental functions" exempts municipal corporations from compliance with the provisions of the Act with respect to those employes whose efforts are availed of in the exercise of the purely governmental functions of the municipal corporation, then what meaning are we to ascribe to the language "municipal * * * corporation, political subdivision," appearing in the early part of such exclusion? To state the matter in another way, it would appear from such exclusion that if it were not for the last phrase all services performed in the employ of any municipal corporation or political subdivision would be excluded from the term "employment" as used in the Act. The last clause, when construed as a separate unit, specifically excludes employment or service performed in the employ of political subdivisions in the exercise of purely governmental functions. If it had been the intent of the General Assembly to exclude from the term "employment" services performed for political subdivisions only when they were in the exercise of purely governmental functions there could have been no purpose for the insertion of the language "municipal or public corporation, political subdivision". No meaning whatever could be ascribed to such language used by the Legislature.

In view of the rule above expressed that we may not read language out of a statute which the Legislature has placed there, is it not necessary that we examine the section carefully with a view to determining the reason which must have been in the mind of the Legislature in the use of the language?

Now, if we analyze the first part of the section it would appear that the General Assembly has excluded from the term "employment" all services of employes of either a governmental unit, a municipal corporation or a political subdivision; that is, if the provision of exclusion terminated at that point, it would include all employes of such entities in whatsoever capacity to which they might be assigned. However, the terms governmental unit, municipal corporation, public corporation or political subdivision might not include some type of entity or unit which would come within the meaning of the term "instrumentality". The Legislature, when adding the term "instrumentality" has limited its meaning by exempting service rendered to an instrumentality when it was rendered to (1) an instrumentality of the United States, (2) an instrumentality of one or more states, or (3) an instrumentality of political subdivisions in the exercise of purely governmental functions. Such appears to be the grammatical or rhetorical interpretation of the provision of exclusion above quoted and is one which will not cause us to read any language out of the statute or insert any provision which does not appear there.

As was stated by Mr. Justice Brewer in United States v. Goldenburg, 168 U. S. 95, 102, 103:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislature. It is true that there are cases in which the letter of the statute are not deemed controlling, but these cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent."

It would, therefore, appear that while a municipal corporation is included within the literal definition of an "employer" as defined in Section 1345-1 of the General Code, by virtue of the provisions of exclusion from the definition of "employment", it can have no employes and since it is required to make contributions only as to employes, it is not required to make contributions to the Unemployment Compensation Fund.

You further inquire as to whether the Bureau of Unemployment Compensation may make refunds of moneys erroneously paid into the fund. Section 1345-2 (e) of the General Code makes the following provision for the refund of contributions to an employer:

> "If not later than four years after the date on which any contribution or interest thereon is paid, or within one (1) year from the effective date of this act, an employer who has paid such

contribution or interest shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the administrator shall determine that such contribution or interest or any portion thereof was erroneously collected, the administrator shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the administrator shall refund said amount, without interest, from the clearing account of the unemployment fund, whether or not there is or was an action, claim or proceeding pending before any tribunal on said claim for refund at the time this act becomes effective. For like cause, and within the same period, adjustment or refund may be so made on the administrator's own initiative."

Specifically answering your inquiries, it is my opinion that:

1. A municipal corporation is not required by the provisions of the present Ohio Unemployment Compensation Act (Sections 1345-1 to 1345-34, both inclusive, General Code) to make contributions to the Unemployment Compensation Fund of Ohio.

2. If a municipal corporation has made contributions to the Unemployment Compensation Fund of Ohio with respect to certain of its employes, refunds may be made as provided in Section 1345-2(e) of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.