heat, light and other expense of the general office of the contractor, but as well the expense of executive officers, clerks and other employes having general superintendence of the work of the corporation.

My examination of the authorities persuades me to be of the opinion that salaries of officers of a partnership or corporation performing a construction contract are not generally considered as a part of the "cost" of construction under such contract. In view of such fact, it appears to me that your inquiry should be answered in the affirmative.

Specifically answering your inquiry, it is my opinion that: When a city enters into a contract with a partnership or corporation for the construction of an improvement on a "cost plus" basis, such city may not include an item of twenty-five dollars per diem to such partner or the president as his compensation or salary.

Respectfully,
THOMAS J. HERBERT,
*Attorney General.*

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1207.

BONDS—CITY OF AKRON, SUMMIT COUNTY, $5,000.00.

COLUMBUS, OHIO, September 19, 1939.

*Retirement Board, Public Employes Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Akron, Summit County, Ohio, $5,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of sewage disposal bonds in the aggregate amount of $700,000.00, dated February 1, 1923, and bearing interest at the rate of 4¾% per annum.

For this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,
THOMAS J. HERBERT,
*Attorney General.*

1208.

UNEMPLOYMENT COMPENSATION ACT — ADMINISTRATOR, BUREAU UNEMPLOYMENT COMPENSATION—UNEMPLOYMENT COMPENSATION BOARD OF REVIEW—DECISION — STATUS AS TO AUTHORITY, JURISDICTION, APPEAL — PROCEDURE — PRECEDENT, FUTURE CASES.

*SYLLABUS:*

*1. The Administrator of the Bureau of Unemployment Compensation is bound to give effect to a decision of the Unemployment Compensation Board of Review in a matter properly appealed to it and to pay benefits in accordance with the decision, even though the Administrator is of the opinion that the decision of the Board of Review is inconsistent with the Unemployment Compensation Act.*

*2. The Administrator of the Bureau of Unemployment Compensation is not bound as a matter of law to accept the decision of the Unemployment Compensation Board of Review as a binding precedent to be followed in future cases involving similar facts, but as a matter of sound, economical and efficient administrative policy he should do so until such decision may have been overruled or reversed by the Board itself or by a court of competent jurisdiction.*

COLUMBUS, OHIO, September 20, 1939.

HON. HERSCHEL C. ATKINSON, *Administrator, Bureau of Unemployment Compensation, 427 Cleveland Avenue, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

"Subsequent to the recent amendment of the Ohio Unemployment Compensation Act and my appointment as Administrator of the Bureau of Unemployment Compensation, there have arisen the following questions upon which I request your opinion:

1. May the Unemployment Compensation Board of Review (composed of unbonded officials) render a decision on appeal and direct the Administrator (a bonded official) to pay unemployment benefits after the Administrator determines under Section 1345-6 (c), Ohio General Code, that benefits shall not be payable as long as one of the conditions enumerated in this section continues?

2. My second question involves the authority of the Unemployment Compensation Board of Review to set a precedent

to be followed in future cases similar in nature, especially in those cases in which the appeal decision of the Board of Review is in direct contradiction of my interpretation of the Unemployment Compensation Act. Two examples will illustrate the problem involved:

(a) Section 1345-6 d. reads, in part—

'except that individuals who have been discharged for just cause connected with their work and those who have voluntarily quit their work without just cause, and thereafter are unable to secure *other work,* shall have a waiting period of six weeks during which no benefits shall be payable.'

I have interpreted this to mean that the Bureau cannot deny the payment of benefits because an otherwise eligible claimant refuses to accept an offer of re-employment by a former employer.

In Appeal Docket No. 746 (a copy of which is attached) the Referee's decision became the decision of the Board of Review under the provisions of Section 1346-4. Benefits were denied because the claimant had refused an offer of re-employment. Is it incumbent on me, as Administrator, to deny benefits in the first instance to those claimants who refuse to accept an offer of re-employment under conditions similar to those in Appeal Docket No. 746?

(b) Section 1345-1 e (E) (9) provides that the term 'employment' shall not include—

'Service performed as an "extra" worker on not more than one day in any calendar week.'

I have interpreted this to mean that if the otherwise eligible claimant works in more than one day in any calendar week during his qualifying period, all weeks of work are to be considered weeks of employment, including both 'one-day weeks', and 'more than one-day weeks'.

In Appeal Docket No. 111 (a copy of which is attached) the Referee's decision became the decision of the Board of Review under Section 1346-4. Benefits were denied because the claimant worked as an 'extra worker' one day a week for nineteen weeks and did not, therefore, have 'employment' in each of twenty weeks. Is it incumbent on me, as Administrator, to deny benefits in the first instance to those claimants who, having worked as an extra one day a week, later work two or more days in any week, but are not employed in enough 'two or more day weeks' to qualify them for benefits, assuming that other circumstances are similar to those in Appeal Docket No. 111."

Paragraph c of Section 1345-6, General Code, referred to in your first question, is as follows:

> "No benefits shall be payable to any individual who has lost his employment or has left his employment by reason of strike in the establishment in which he was employed, as long as such strike continues; or whose unemployment has been directly caused by an act of God; or who becomes unemployed by reason of commitment to any penal institution; or who fails or refuses to report to the bureau of unemployment compensation or its designated agencies from time to time as required by its rules; or who refuses to accept an offer of work for which he is reasonably fitted."

Your first inquiry raises the question of the jurisdiction and power of the Board of Review created by Section 1346-3, General Code, to render a binding decision on appeal from your determination of a claim for benefits.

Section 1346-3, General Code, after creating the Unemployment Compensation Board of Review and providing for the appointment, qualification, salary, term of office and removal of the members thereof, provides inter alia:

> "* * * * * * * * *
>
> It shall be the duty of the board to hear appeals arising from claims for compensation, adopt, amend or rescind such rules of procedure, undertake such investigations and take such action required for the hearing and disposition of appeals as it deems necessary and consistent with the unemployment compensation law. Such rules of procedure shall be effective as the board shall prescribe and shall not be inconsistent with the unemployment compensation law.
>
> The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, with power to take testimony in any appeals coming before the board. The board and its referees shall, in the performance of their duties, exercise all the powers provided by section 1345-24. The administrator shall furnish the board and its referees and secretary with such offices, reporters, clerical aids and other help and supplies as shall be requisite to the discharge of the duties of the board, utilizing those already provided for his main office or branch offices wherever possible."

I also quote Section 1346-4, General Code, in full as follows:

"Claims for benefits shall be filed with a deputy of the administrator designated for the purpose. The administrator or his deputy shall promptly examine any claim filed, and on the basis of any facts found by him shall determine whether or not the claim for benefits is valid and if valid the week with respect to which benefits shall commence, the weekly benefits payable, and the maximum duration thereof. The claimant and other parties who may be affected by such determination shall promptly be notified of the decision and the reasons therefor.

Any interested party may within the time provided for filing an appeal apply for or consent to a reconsideration of the deputy's determination, and such application or consent shall stay proceedings on any appeal filed prior to the decision upon reconsideration. Unless the claimant or other affected parties file an appeal from such decision with the board within ten calendar days after such notification was mailed to the last known post office address of the appellant and applies for a hearing, such decision of the administrator shall be final and benefits shall be paid or denied in accordance therewith. In the event that an appeal is filed with the board, the payment of benefits shall be withheld pending decision on the appeal, but when the board affirms a decision of the referee allowing benefits, such benfits shall be paid, notwithstanding any further appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

Where an appeal from the decision of the administrator is taken, a referee shall, after affording the parties reasonable opportunity for a fair hearing, affirm, modify or reverse such findings of fact and the decision of the administrator as to him shall appear just and proper.

The parties shall be duly notified of the referee's decision and the reasons therefor, which shall be deemed the final decision of the board unless, within ten days after the date of such decision, the board acts on its own motion or upon application permits any of the parties to institute a further appeal before the board. A memorandum of testimony of any hearing before any referee shall be made and be preserved for a period of two years.

Any timely written notice lodged with the board, with the administrator or one of his deputies advising that the appellant desires a review shall be sufficient to constitute an appeal to the board.

When any claim pending before a referee is removed or transferred to the board, the board shall afford the parties reasonable opportunity for a fair hearing. The parties shall be duly notified of the board's final decision and the reasons therefor. A complete record shall be kept of each case heard before the board. All testimony of any hearing before the board, whether on appeal or otherwise, shall be taken by a reporter, but need not be transcribed unless the disputed claim is further appealed.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the board of review or its representatives. Any individual claiming benefits in any proceeding before the board of review or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such scrvices more than an amount approved by the board of review. Any person who charges or receives anything of value in violation of any provision of this paragraph shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months.

Any employer or employee who may be affected by the decision of the board of review or of a referee, where an appeal has been disallowed by the board, may, within thirty days therefrom, appeal from such decision to the court of common pleas of the county wherein said appellant, as an employee, is resident or was last employed, or of the county wherein the appellant, as an employer, is resident or has his principal place of business in Ohio. Such appeal shall be lodged with such court by the filing of a petition against the board and issuance of summons to such board. The board shall thereupon have prepared and certify to a transcript of its proceedings and the appeal shall be heard upon such transcript and the decision of the board shall not be modified or reversed unless such court shall find that such decision was unlawful, unreasonable or against the manifest weight of the evidence. Either party shall have the right to appeal from the court of common pleas as in other civil cases. Except as herein provided, any decision made by the administrator or a deputy of the administrator by the board of review or one of its referees shall be final."

Taken together, these two sections unquestionably give to the Board of Review jurisdiction to hear appeals arising from claims for unemployment compensation benefits decided by the Administrator and, after affording to the parties a reasonable opportunity for a fair hearing, to affirm, modify or reverse the findings of fact and decision of the Administrator.

In passing, I may say that the fact that the Administrator is bonded and the members of the Board of Review are not, does not affect the question at all. It has been the law of this State for many years to require a bond of justices of the peace, yet the power of common pleas courts presided over by judges who are not required by law to give bond, to reverse the judgments of justices of the peace, is unquestioned. The jurisdiction of an appellate tribunal to reverse the decisions of a board, commission, officer or court from which the appeal is taken depends not on whether the members of the appellate tribunal may have given bond but on the applicable provisions of law establishing the appellate jurisdiction.

The Board of Review is clearly given power and jurisdiction by the provisions of law above quoted to review decisions made by the Administrator of the Bureau of Unemployment Compensation with respect to claims for unemployment compensation benefits and to affirm, modify or reverse such decisions of the Administrator. It is true that Section 1346-3, General Code, provides that in the disposition of such appeals the action of the Board of Review shall be consistent with the Unemployment Compensation Law. I take this to mean that the Board of Review must decide the appeals which properly come before it consistently with the provisions of the Unemployment Compensation Law and that, in reaching its determination as to the meaning of the law, until some tribunal having jurisdiction to review its decisions interprets the law, it must reach its own conclusions and is not bound to follow the decision of the Administrator.

In 2 O. Jur., 119, Section 929, I find the following statement:

> "When a mandate or procedendo from a superior to an inferior court is presented and the inferior court is moved in accordance with its command to proceed with the case, *it has no discretion to obey or refuse but must proceed.*" (Italics mine.)

It is not your province to determine whether the Board of Review erred in its decision. That authority is vested in another tribunal.

Your second inquiry raises the question of whether the decisions of the Unemployment Compensation Board of Review must be followed by you in future cases involving similar questions where you deem the decision of the Board of Review to be inconsistent with the Unemployment Compensation Act. In other words, you desire to know whether you are bound to follow in future cases the principles which have been announced by the Board of Review in its determination of appeals properly before it. An examination of the Unemployment Compensation Law does not reveal any statute therein which requires you to accept the decisions of the Board of Review as a binding precedent. However, since the Board of Review has unquestioned authority to affirm, modify or reverse your

decisions in respect to claims for benefits, it would seem that as a matter of sound and economical administrative practice you should follow the precedents established by the Board of Review, even though you deem the decision to be erroneous. Otherwise, the party who loses by your decision has but to take an appeal to the Board of Review and have the same reversed. Judges of trial courts in this State regard the principles of law established by the decisions of the higher courts as binding and follow them in future cases.

You are therefore advised, in specific answer to your questions, that:

1. The Administrator of the Bureau of Unemployment Compensation is bound to give effect to a decision of the Unemployment Compensation Board of Review in a matter properly appealed to it and to pay benefits in accordance with the decision, even though the Administrator is of the opinion that the decision of the Board of Review is inconsistent with the Unemployment Compensation Act.

2. The Administrator of the Bureau of Unemployment Compensation is not bound as a matter of law to accept the decision of the Unemployment Compensation Board of Review as a binding precedent to be followed in future cases involving similar facts, but as a matter of sound, economical and efficient administrative policy he should do so until such decision may have been overruled or reversed by the Board itself or by a court of competent jurisdiction.

Respectfully,
THOMAS J. HERBERT,
*Attorney General.*

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1209.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY, $15,000.

COLUMBUS, OHIO, September 20, 1939.

*Retirement Board, Public Employes Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Cleveland, Cuyahoga County, Ohio, $15,000.

The above purchase of bonds appears to be part of a $405,000 issue of refunding bonds of the above city dated September 1, 1939. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of September 7, 1939, being Opinion No. 1146.