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1. STATE EXAMINERS, ASSISTANT STATE EXAMINERS—BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—STATE EMPLOYEES—INCLUDED WITHIN PROVISIONS OF SECTION 486-17c G. C.—SICK LEAVE WITH PAY FOR STATE EMPLOYEES.
2. COMPENSATION OF SUCH EMPLOYEES DURING SICK LEAVE MAY BE CHARGED AGAINST AMOUNT REQUIRED BY SECTION 287 G. C. TO BE CONTRIBUTED BY SEVERAL COUNTIES TOWARD COMPENSATION AND EXPENSES OF EXAMINERS.
3. IF FUNDS PROVIDED BY SECTIONS 287, 288 G. C. ARE INSUFFICIENT TO PAY FOR SICK LEAVE IN ABSENCE OF SUFFICIENT APPROPRIATION, BUREAU MAY MAKE APPLICATION FOR ADDITIONAL FUNDS TO EMERGENCY BOARD—BOARD WOULD HAVE POWER TO GRANT ALLOWANCE—SECTION 2313 G. C.

SYLLABUS:

1. State examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices are state employes and are included within the provisions of Section 486-17c, General Code, providing sick leave with pay for state employes.

2. The compensation of such employes during sick leave may be charged against the amount required by Section 287, General Code, to be contributed by the several counties toward the compensation and expenses of such examiners.

3. In the event that the funds provided by Sections 287 and 288, General Code, are insufficient to pay for such sick leave, and in the absence of a sufficient appropriation therefor, said Bureau may make application for additional funds to the Emergency Board, under Section 2313, General Code, and said Emergency Board would have power to grant such allowance.

Columbus, Ohio, November 24, 1947

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication in which you call my attention to Amended Senate Bill No. 52 enacted by the 97th General Assembly, providing for sick leave with pay for all state employes. You have presented for my opinion the following questions:

“1. Are state examiners and assistant state examiners included within the provisions of this act?

2. If so, due to the lack of specific appropriations for such purpose, would the compensation provided for sick leave for such examiners and assistants be an additional charge against the \$120,000.00 contributed by the counties?

3. If these questions are answered in the affirmative, in the event that the payment of sick leave would exhaust this fund, could the bureau of inspection make application to the Emergency Board for additional funds, and would such board have the authority to grant funds to the bureau in order that it may properly operate.”

Senate Bill No. 52 to which you refer, enacted a new section numbered by the act, Section 486-17c. This section reads as follows:

“Each full-time employee, whose salary or wage is paid in whole or in part by the state of Ohio, shall be entitled for each

completed month of service to sick leave of one and one-fourth ($1\frac{1}{4}$) work days with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family. Unused sick leave shall be cumulative up to ninety (90) work days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit and the civil service commission. The previously accumulated sick leave of an employee who has been separated from the state service may be placed to his credit by the state civil service commission upon his re-employment in the state service. An employee who transfers from one state agency to another state agency shall be credited with the unused balance of his accumulated sick leave. Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employees herein. The responsible administrative officer of the employing unit shall require the employee to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes.

Nothing in this act shall be construed to interfere with existing unused sick leave credit in any agency of state government where attendance records have been maintained and credit has been given employes for unused sick leave."

The only proposition that appears to need consideration in reaching an answer to your first question, is whether those examiners are employes of the state. The act, by its terms, applies not only to full-time employes but also to part-time seasonal and intermittent employes. The one qualification as to all, is that the salary or wage is paid in whole or in part by the state.

The organization and powers of the Bureau of Inspection and Supervision of Public Offices are set forth in Sections 274 to 291, both inclusive, of the General Code. Section 274 provides for the installation of this Bureau in the department of Auditor of State. It is given the power to examine the accounts of all offices of the state and of each taxing district and public institution, and also power to examine the accounts of every private body receiving public money for its use and purpose. One provision of this section reads as follows:

"All expense of such examination shall be borne by the taxing district providing such public money."

Section 276 provides for the appointment of state examiners and assistant state examiners, and fixes their compensation as follows:

“State examiners and assistant state examiners shall receive the following compensation for each day necessarily employed by them in the discharge of such duties as may be assigned to them and for each day absent on leave, not exceeding twelve days in each year: grade one A examiners, fifteen dollars; grade one B examiners, fourteen dollars; grade one C examiners, thirteen dollars; * * *”

The section further contains provisions covering the expenses of these examiners when upon official business.

Section 287 reads as follows:

“The necessary expenses of the maintenance and operation of the bureau of inspection and supervision except the compensation, mileage and expense of state examiners, assistant state examiners and cost of typing reports, shall be financed from the general revenue fund of the state through biennial appropriations by the General Assembly. The total amount of compensation paid state examiners and assistant state examiners in excess of the amount borne by the taxing districts shall be borne by the several counties in proportion to their population at the preceding federal census; provided that the total amount of all such compensation shall not exceed in the aggregate the sum of one hundred and twenty thousand dollars per annum. The auditor of state shall draw on the treasurer of each county for its proportion of such compensation and the county treasurer shall pay such amount from the general revenue fund of the county semi-annually during the months of June and December. All moneys received by the auditor of state for the compensation of the state examiners and assistant state examiners shall be paid into the state treasury to the credit of the public audit expense fund.”

Section 288 reads as follows:

“All expenses pertaining to the inspection and auditing of the public accounts and reports of a taxing district shall be borne by the district, subject to the following limitations: for the services of each state examiner, assigned to examine a township, school district or village, such district shall pay not to exceed ten dollars per day; for the services of each assistant state examiner so assigned such district shall pay not to exceed seven dollars per day, all other taxing districts shall pay not to exceed twelve dollars per day for the services of each state examiner assigned to examine such district and shall pay not to exceed seven and one-half dollars per day for the services of each assistant state examiner so assigned. The auditor of state shall certify the

amount of such expenses, including the charges for services herein provided for, to the auditor of the county in which the taxing district is situated. The county auditor shall forthwith issue his warrant in favor of the auditor of state on the county treasurer, who shall pay it from the general fund of the county, and the county auditor shall charge the amount so paid to the taxing district at the next semi-annual settlement. Moneys so received by the auditor of state shall be paid into the state treasury to the credit of the public audit expense fund."

As will be seen from a reading of the two sections just quoted, the amounts chargeable to the taxing districts as well as the balance which is to be apportioned to the counties, are to be collected by the Auditor of State and paid into the state treasury to the credit of the public audit expense fund. From this fund appropriations are made by the General Assembly from time to time, and the compensation of the examiners is thus paid.

The fact that the state thus reimburses itself for the compensation of these examiners in no way affects their status as public employes and as employes of the state. As already noted, their appointment by the Auditor of State is expressly authorized and their compensation fixed by statute. They have repeatedly been held to be public employes within the provisions of the civil service laws and within the classified service. See 1914 Opinions of the Attorney General, p. 734; 1915 id. p. 78; 1939 id. p. 1219.

The conclusion which I have indicated as to the status of these examiners may seem to be inconsistent with my opinion found in 1946 Opinions of the Attorney General, page 620, holding that persons employed by the Superintendent of Banks in the liquidation of banking institutions are not employes of the state within the meaning of the law relating to the public employes retirement system. That law includes as state employes any person "employed and paid in whole or in part by the State of Ohio, in any capacity whatsoever". It was, however, pointed out in that opinion that such employes are not really employes of the state but of the Superintendent as liquidator and that their compensation was not paid out of the treasury of the state but out of the funds coming into the hands of the liquidator, and belonging to the bank. These funds do not find their way into the treasury of state but are paid by the superintendent out of the funds of the bank upon the order of the court of common pleas. Furthermore, reliance was had on the holding of the Supreme Court, in the

case of State, ex rel. Merion v. Unemployment Board of Review et al., 142 O. S., 628, holding that such an employe could not be classed as an employe of the state and was not under civil service.

In the case of the state examiners, who are the subject of your inquiry, they are, as I have already indicated, paid by the state on the basis of the scale of compensation fixed by law and are in the classified civil service of the state. It is accordingly my opinion that state examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices are entitled to the benefits of Section 486-17c, General Code, providing for sick leave with pay to state employes.

Answering your second question, as to charging this sick leave pay against the \$120,000 contributed by the counties under the provisions of Section 287, General Code supra, it appears to me quite plain that this portion of the compensation of the examiners is as properly chargeable to that fund as any other portion. By the terms of said Section 486-17c, this sick leave compensation is clearly a part of the compensation of the examiners. In other words, the effect of the law is to provide that while they are on sick leave, they shall be considered as being entitled to their regular compensation the same as if they were at work.

As to the right of the Bureau to make application to the Emergency Board for an additional allowance under the provisions of Section 2313, General Code, I observe that that section in substantially the same form as at present, had been in force long before the enactment of the "Administrative Code" (112 O. L., 105). However, that act included Section 2313. This section provides in part as follows:

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law."

It will be noted that authority is here given to any institution, *department* or commission of the state to make application to the emergency board for emergency funds. Nothing is said about the right of the prin-

cial elective officers of the state to make such application. The question might therefore arise whether in view of the definition of "department" as set out in Section 154-2, General Code, which was part of the Administrative Code, the General Assembly meant to limit the right of application for emergency funds to the administrative departments created by the act.

I note, however, that the act in question starts with this introductory paragraph:

"Section 1. Chapter 1a of Division 1, Title III, Part First of the General Code, consisting of Sections 154-1 to 154-58, inclusive, and entitled 'Administrative Code', is hereby enacted, as follows:"

In Section 154-2 appears the following definition:

"Section 154-2. Definition of terms. As used in this chapter:

'Department' means the several departments of state administration enumerated in Section 154-3 of the General Code."

Accordingly, it appears clear that the narrow definition of "department" which has come to be associated only with the administrative departments, was not intended to apply to the word as used in Section 2313, which is not a section of the newly created Chapter 1a.

This conclusion is strengthened by the fact that by long continued administrative practice for many years before, as well as ever since the enactment of the Administrative Code, the several elective heads of the state have applied to the emergency board for allowances and the same have in many instances been granted.

It is therefore my opinion that if the payment of the sick leave of the examiners should exhaust the fund provided by Sections 287 and 288, General Code, your Bureau would have the right to apply to the emergency board for emergency funds and such board would be authorized to grant an allowance sufficient to enable the Bureau properly to operate.

Respectfully,

HUGH S. JENKINS,
Attorney General.