

1973.

BUREAU OF UNEMPLOYMENT COMPENSATION, ADMINISTRATOR — MAY APPROVE ELECTION OF INDIVIDUAL WHO EMPLOYS LESS THAN THREE PERSONS TO BECOME EMPLOYER SUBJECT TO PROVISIONS OF UNEMPLOYMENT COMPENSATION ACT.

SYLLABUS:

The Administrator of the Bureau of Unemployment Compensation may approve an election made by an individual, who has less than three persons in his employ, to become an employer subject to the provisions of the Unemployment Compensation Act.

Columbus, Ohio, March 6, 1940.

Hon. Herschel C. Atkinson, Administrator,
Bureau of Unemployment Compensation, 427 Cleveland Avenue,
Columbus, Ohio.

Dear Sir:

You have requested my opinion as to whether you as Administrator of the Bureau of Unemployment Compensation may approve an election made by an individual to become an employer subject to the provisions of the Unemployment Compensation Act where such individual does not fall within the definition of the term "employer" contained in the act by reason of not having three or more individuals in his employ.

Section 1345-1, General Code, provides in part as follows:

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

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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) has, or subsequent to December 31, 1936, had in employment three or more individuals at any one time within the current 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 purposes of this act.

(2) An employer subject to this act within any calendar year shall be subject to this act during the whole of such calendar year.

(3) An employer, not otherwise subject to this act who files with the administrator his written election to become an employer subject hereto for not less than two calendar years, shall, with the written approval of such election by the administrator, become an

employer subject hereto, to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January, he has filed with the administrator a written notice to that effect.

(4) Any employer for whom services that do not constitute employment as defined in this act are performed, may file with the administrator a written election that all such services performed by individuals in his employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years. Upon the written approval of such election by the administrator, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January such employer has filed with the administrator a written notice to that effect."

The legislature's own definitions of the terms used in its statutes are authoritative and controlling and ordinarily should be followed in construing or interpreting a statute. In 37 O. Jur., 536, Section 283, it is said:

"The lawmaking body's own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, there is no better way to determine the intent and purpose of the legislature than by its own definition of the language used. Accordingly, any provision in a statute which declares its meaning is authoritative and in many cases will have controlling weight. In such cases, definitions of experts of the terms used are immaterial. * * *"

However, you will note that it is provided in the Unemployment Compensation Act that the definitions contained therein are not controlling where the context clearly shows that other meanings are intended.

Paragraph (3) of subsection b of Section 1345-1, General Code, provides that an employer, not otherwise subject to the act, may in writing elect, with the written approval of the Administrator, to become an employer subject thereto. Likewise, paragraph (4) of the same subsection provides that an employer for whom services which do not constitute employment as defined in the act are performed, may elect in writing, with the written approval of the Administrator, that all such services performed by individuals in his employ in one or more distinct establishments or places of

business shall be deemed to constitute employment for all the purposes of the act. Clearly, the term "employer" is used in these two paragraphs in a sense other than as defined in the act and it would seem that it should be given its ordinary and usual meaning. If it were otherwise, there would have been no reason to place these two paragraphs in the act, for individuals who fall within the term "employer" as defined in the act are subject to the provisions thereof without any election.

It is believed that the term "employer" as used in paragraph (3) refers to a person having less than three employes in employment and the term "services" as used in paragraph (4) refers to services performed by agricultural laborers, domestic servants in private homes and the other forms of services which are expressly stated not to be "employment" within the meaning of the act by Section 1345-1 (c) (E). In such cases the individual may elect in writing, with the written approval of the Administrator, to become subject to the act and thereby give to his employes the protection thereof.

I am therefore of the opinion that the Administrator of the Bureau of Unemployment Compensation may approve an election made by an individual, who has less than three persons in his employ, to become an employer subject to the provisions of the Unemployment Compensation Act.

Respectfully,

THOMAS J. HERBERT,
Attorney General.