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1. UNEMPLOYMENT COMPENSATION, BUREAU OF—MANAGER, GRADE III APPOINTED BY TRANSFER FROM POSITION OF SUPERVISOR, STATE LIQUOR STORES—APPOINTMENT FROM ELIGIBLE LIST ASSEMBLED BY COUNTIES—MAY BE TRANSFERRED TO PERFORM SAME DUTIES UNDER SAME POSITION TO LOCATION OTHER THAN ORIGINALLY HELD.
  
2. PERSON WHILE ON LEAVE FROM B. U. C. VOLUNTARILY ACCEPTS CHANGE OF DUTIES AND POSITION IN SERVICE OF FEDERAL GOVERNMENT—MAY NOT BE CONSIDERED TO HAVE WAIVED REINSTATEMENT TO FORMER CIVIL SERVICE STATUS AND TO SAME OR SIMILAR RANK AND GRADE HELD PRIOR TO TRANSFER TO FEDERAL SERVICE—SECTIONS 1345-13a, 1345-13b G. C.

## SYLLABUS:

1. A person appointed manager, Grade III, Bureau of Unemployment Compensation by transfer from a position of supervisor, state liquor stores, after appointment from an eligible list assembled by counties, may be transferred to a location other than that originally held to perform the same duties under the same position.

2. A person who voluntarily accepts a change of duties and position while on leave from the Bureau of Unemployment Compensation and in the service of the Federal Government, under the terms of Sections 1345-13a and 1345-13b, General Code, may not be considered to have waived reinstatement to his former civil service status and to a classified position of the same or similar rank and grade held by him immediately prior to his transfer to the Federal service.

Columbus, Ohio, December 10, 1946

Hon. Charles H. Jones, Administrator, Bureau of Unemployment Compensation  
Columbus, Ohio

Dear Sir:

I have your recent letter in which you request my opinion and which letter is as follows:

"This Bureau is in receipt of a registered letter from C. R. S., notifying us of his availability for reinstatement as manager of our Lorain office.

C. S. was employed by this Bureau as a local Office Manager, grade III, in Lorain, at \$200 per month, having been appointed from a certified district list created for Lorain County.

As an employee of the Ohio State Employment Service Division of this Bureau, he was transferred to federal service at the time the Ohio State Employment Service was loaned to the Federal Government for the duration of the war.

On July 1, 1942 the United States Employment Service, with his consent, transferred Mr. S. to their Cleveland office as an interviewer, Grade II, and he continued to occupy this position until the return of the Employment Service to the State on November 16, 1946.

Section 1345-13b of the Ohio General Code reads in part as follows:

'Upon the return of the functions of the United States employment service and other related transferred services to the state of Ohio, each such former employee of the Ohio bureau of unemployment compensation shall be restored within sixty days thereafter to his former civil service status and to a classified position of the same or similar rank and grade held by him immediately prior to such transfer, provided, however, that each such former employee shall have filed notice of availability with the administrator of the bureau of unemployment compensation within thirty days after the return of such functions to the state of Ohio. Any person so transferred from the state service who shall have, subsequent to January 1, 1942, voluntarily terminated his services with the United States employment service in Ohio or with the federal agency or agencies charged with the operation of such employment service in Ohio or with any other related service to which he may have been transferred, shall be deemed to have resigned from such service and shall not be eligible for restoration to his former state position; \* \* \*'

We request your opinion as to whether under the circumstances above set forth, Mr. S. lost or waived his status as manager, and if not, whether the Administrator has the right and authority to assign him as manager of a local office outside of Lorain County at his former rank and grade."

Inquiry of the Civil Service Commission discloses that, from the Commission's records, although Mr. S. took a competitive examination for the position of local office manager, Bureau of Unemployment Compensation, he in fact took Examination No. 4929 for supervisor, state liquor stores, and was appointed from the resulting eligible list as a supervisor, state liquor stores, on April 4, 1934 and was transferred to the Bureau of Unemployment Compensation on May 16, 1939 as manager, Grade III.

The bulletin of the Civil Service Commission announcing Examination No. 4929, which resulted in the appointment of Mr. S., had the following note under the heading, Information For Applicants :

"Unless otherwise noted eligible lists will be arranged by counties. Applicants may take the examination at the point most convenient and easily reached but those receiving passing grade will be certified for appointment only in the county in which they reside."

I am informed that the eligible list from which Mr. S. was appointed was a so-called county list for Lorain County. The query then arises: Does the fact that Mr. S. was appointed from a county list now prevent his being assigned to duties within his proper classification but outside that county?

It should first be noticed that there is no requirement in the civil service laws which touches upon or prevents such assignment; neither do the regulations of the Civil Service Commission prohibit a change of assignment such as the one you suggest. On the contrary, the law and the regulations of the Civil Service Commission consider and regulate only the transfer of a person from a department of the state to another department, between state and county service and the transfer of a person from one position to another either within or without a department. See Section 486-16, General Code; Regulation X, Civil Service Commission.

Similarly, the regulation of the Civil Service Commission providing for the division of the state into examination districts contains no prohibition against the change of location of duties that you suggest. See Regulation IV, Civil Service Commission.

In the absence, then, of either law or regulation governing the subject, it is safe to conclude that an assignment of a person only to a different

location in the same position within a department is not prohibited. The rule of *expressio unius est exclusio alterius* would dictate this result.

The provisions of Section 1345-13b, General Code, which you have quoted in your letter, do not, I should point out here, require the reinstatement of a person to the exact position he held prior to his transfer to the federal service. All that that section requires is that a person be restored to his former civil service status and to a classified civil service position of the same or similar rank or grade held by him immediately prior to such transfer.

I am aware of the thought sometimes existing administratively that a person so appointed from the county eligible list may not be detailed to work in his proper classification and status outside the county of appointment. I am, however, unable to determine a proper basis for that idea. Neither the law nor regulation forbids it and the fact that the eligibles were assembled on a county basis to form county lists does not, of itself, in my opinion preclude the change of location of duties attaching to a person's position. The language of the civil service bulletin noted above, in my opinion, does not, merely because it announces that persons will be appointed in their county of residence from an eligible list created for that county, preclude a later assignment outside that county. It should also be considered that Mr. S., by transferring from the position of supervisor, state liquor stores, to manager, Grade III, Bureau of Unemployment Compensation, undoubtedly abandoned any conditions, if there were any, attaching to his appointment with the Department of Liquor Control.

Considered in the light of the above discussion, I believe that the language of Section 1345-13, General Code, dealing with the authority of the Administrator of the Bureau of Unemployment Compensation, finally resolves the question of whether or not Mr. S. may be transferred out of Lorain County to the same position he now holds in another county. That section, so far as pertinent, is as follows:

“(a) In addition to all other duties imposed on the administrator and powers granted by the provisions of this act, the administrator shall have full power: \* \* \*

(2) To employ, subject to the civil service laws of this state, secretaries, deputies, accountants, managers of district offices, clerks, stenographers, and other assistants that may be

required for the administration of the provisions of this act, and  
*to determine their salaries and duties; \* \* \*.*"

(Emphasis added.)

In my opinion, the specific authority granted to the Administrator by the above emphasized language to determine the duties of employes carries with it, in a case of a department having statewide operation through local offices, the right to assign the place where the duties are to be performed. It must be concluded, then, that in the absence of any provision of the civil service law forbidding it, the Administrator has the authority to detail Mr. S. to a location outside of Lorain County for the performance of his proper duties under his proper classification.

Your letter also suggests the question of whether Mr. S. lost his right to claim his manager's position because of his assignment to a different position while in the employ of the Federal Government when the employment service was in the hands of that government.

Upon the transfer of the Ohio State Employment Service to the Federal Government in 1942, the status of the employes of that department was in doubt, but that doubt was cleared by the passage by the General Assembly in 1943 of Section 1345-13a, General Code. That section is as follows:

"That all employees of the Ohio bureau of unemployment compensation who were or shall be transferred to the United States employment service of Ohio for an emergency period pursuant to executive order No. 8990, signed by the president of the United States on December 23, 1941, and executive order No. 9008, signed by the president of the United States on January 2, 1942, or any other authority of law or executive order, shall be deemed to be on leave of absence from the state service and their positions in the classified civil service of this state for the period of such emergency subject to the conditions hereinafter specified."

Section 1345-13b, General Code, part of the same legislative act, clarifies further the status of employes of the Ohio State Employment Service while in the service of the Federal Government and establishes the "conditions hereinafter specified." It is as follows:

"Upon the return of the functions of the United States employment service and other related transferred services to the

state of Ohio, each such former employee of the Ohio bureau of unemployment compensation shall be restored within sixty days thereafter to his former civil service status and to a classified position of the same or similar rank and grade held by him immediately prior to such transfer, provided, however, that each such former employee shall have filed notice of availability with the administrator of the bureau of unemployment compensation within thirty days after the return of such functions to the state of Ohio. Any person so transferred from the state service who shall have, subsequent to January 1, 1942, voluntarily terminated his services with the United States employment service in Ohio or with the federal agency or agencies charged with the operation of such employment service in Ohio or with any other related service to which he may have been transferred, shall be deemed to have resigned from such service and shall not be eligible for restoration to his former state position; however, any such employee who, at the request of any federal or state department or agency is, with the consent of the employee, loaned to such department or agency for some war purpose for a period not to exceed his leave of absence, shall be entitled to restoration to a position and to his former civil service status with the state of Ohio as provided herein, if such transfer is approved by the administrator of the bureau of unemployment compensation. Any employee on leave of absence as provided for in this act may, prior to the termination of the period of emergency, as defined in this act, be restored to his state civil service status for the purpose of transferring the employee with his consent to a similar position and classification in any department of state government; provided, however, that the appointing authority of the department to which the employee is to be transferred shall have filed a request for such transfer with the state civil service commission. The administrator of the bureau of unemployment compensation and the civil service commission of Ohio are hereby authorized and directed to take the proper action necessary to carry out the provisions of this act."

There are many opinions of this office that state the rule that a person on leave of absence retains his position and status during the period of leave. It is not necessary, however, to refer to those opinions because of the definite fixing of status by the above statutes for employees transferred to the federal service.

It is first difficult to perceive how a voluntary, and perhaps temporary, change of position made with one employer while on leave of absence from another employer could be taken advantage of by the second em-

ployer as a waiver or a voluntary relinquishment of position. I believe, however, that the language of Section 1345-13b, General Code, when it says in unequivocal language that a person on leave subject to the statute "shall be restored \* \* \* to his former civil service status and to a classified position of the same or similar rank and grade held by him immediately prior to such transfer" precludes any consideration of whether or not Mr. S. waived his former position by the acceptance of another position while in the federal service. Especially is this so because Section 1345-13b, General Code, does specify those instances whereby an employe forfeits his right to return to his former position or status.

From the above considerations, you are advised that, in my opinion:

1. A person appointed manager, Grade III, Bureau of Unemployment Compensation by transfer from a position of supervisor, state liquor stores, after appointment from an eligible list assembled by counties, may be transferred to a location other than that originally held to perform the same duties under the same position.

2. A person who voluntarily accepts a change of duties and position while on leave from the Bureau of Unemployment Compensation and in the service of the Federal Government, under the terms of Sections 1345-13a and 1345-13b, General Code, may not be considered to have waived reinstatement to his former civil service status and to a classified position of the same or similar rank and grade held by him immediately prior to his transfer to the Federal service.

Respectfully,

HUGH S. JENKINS  
Attorney General