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1. EMPLOYEES, INDUSTRIAL COMMISSION OF OHIO—SECTION 154-20 G. C. HAS NO APPLICATION.
2. COMMISSION HAS LEGAL POWER TO DEFINE WORKING HOURS OF ITS EMPLOYEES SO LONG AS IT COMPLIES WITH REQUIREMENTS OF SECTIONS 871-9 AND 1465-40 G. C. AS TO HOURS IT IS "OPEN FOR THE TRANSACTION OF BUSINESS."

SYLLABUS:

1. Section 154-20, General Code, has no application to employees of The Industrial Commission of Ohio.
2. The Industrial Commission has the legal power to define the working hours of its employees so long as it complies with the requirements of Sections 871-9 and 1465-40, General Code, with reference to the hours during which it is to be "open for the transaction of business".

Columbus, Ohio, March 25, 1946

The Industrial Commission of Ohio
Columbus, Ohio

Gentlemen:

I am in receipt of your request for my opinion which reads as follows:

"The Industrial Commission of Ohio respectfully requests an opinion on the following state of facts as applied to the Ohio General Code:

The Industrial Commission of Ohio, together with other state departments, began working on a schedule from 8:15 A. M. to 4:45 P. M. some time during the year 1941. This change was made so the departments would be starting and quitting work at different times, with the result that public transportation systems would not be overburdened.

The Industrial Commission now proposes to change its hours from 8 A. M. to 5 P. M. Monday through Friday, and from 8:30 A. M. to 12 noon on Saturdays. On Saturday mornings every section of The Industrial Commission will have a partial force on hand to take care of any and all business. Most of the employees would normally only be required to work once every six weeks on Saturday morning. Under this plan, which went into operation on February 18, 1946, employees of The Industrial Commission will be working the same number of hours that they have been working during the past five years. In our opinion, the two sections of the General Code that are involved in this question are Section 1465-40, which reads as follows:

‘Continuous session. The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records.’ * * *

And Section 154-20:

‘Hours of labor, vacation leave, extra compensation prohibited. All employees in the several departments of the state service, except the state highway department, shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excluded, except in cases in which, *in the judgment of the director*, the public service will not thereby be impaired. * * *’

It is the considered opinion of The Industrial Commission that the public service will not be impaired by this action, but in fact the efficiency of the employees and the public service rendered by The Industrial Commission of Ohio will be improved by this action.

This change of schedule was adopted on a temporary basis to ascertain if it will work satisfactorily. The Industrial Commission desires your opinion as to whether or not this change in working procedure is entirely proper and legal under the provisions of the Ohio law. Since there has been some indication that the regular salary payroll will be held up pending your opinion, we urge that this matter be given your prompt attention.”

The provisions of law which deal generally with the hours of labor of state employees are set out in Section 154-20, General Code. Said section which is a part of the so-called administrative code enacted in 1921 (109 O. L. 105) reads in part as follows:

“All employees in the several departments of the state service, except the state highway department, shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excluded, except in cases in which in the judgment of the director, the public service will not thereby be impaired.”

It will be noted, however, that the above section provides that “*all employees in the several departments of the state service * * ** shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excluded.” In view of such language it becomes necessary to determine whether or not the Industrial Commission is one of the “departments of the state service.” Reference to Section 154-2, General Code, discloses that the word “department” is defined therein. Said section reads as follows:

“As used in this chapter:

‘Department’ means the several departments of state administration enumerated in section 154-3 of the General Code.

‘Division’ means a part of a department established as provided in section 154-8 of the General Code, for the convenient performance of one or more of the functions committed to a department by this chapter.

The phrase ‘departments, offices and institutions’ includes every organized body, office and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state.”

Section 154-3, General Code, referred to in the above section, reads as follows:

“The following administrative departments are created:

The department of finance, which shall be administered by the director of finance, hereby created;

The department of commerce, which shall be administered by the director of commerce, hereby created;

The department of public works, which shall be administered by the superintendent of public works as director thereof ;

The department of highways, which shall be administered by the director of highways, hereby created ;

The department of agriculture, which shall be administered by the director of agriculture, hereby created ;

The department of health, which shall be administered by the director of health, hereby created ;

The department of industrial relations, which shall be administered by the director of industrial relations, hereby created ;

The department of education, which shall be administered by the superintendent of public instruction, as director thereof ;

The department of public welfare, which shall be administered by the director of public welfare, hereby created ;

The department of liquor control, which shall be administered by the director of liquor control.

The director of each department shall, subject to the provisions of this act, exercise the powers and perform the duties vested by law in such department."

Where the legislature has seen fit to exercise its power to define the sense in which words are employed in a statute, the legislature's own construction of its language should be followed in the interpretation of the section to which it is intended to apply. 37 O. J. 283. It will be noted that the Industrial Commission is not one of the departments enumerated in Section 154-3, General Code. The Industrial Commission, therefore, is not a department under the terms of the legislative definition of that word as it is used in Section 154-20, General Code.

Nor is the Industrial Commission a division within the legislative definition of that term. A division according to Section 154-2, General Code, quoted above, is "a part of a department established as provided in Section 154-8, General Code." The Industrial Commission was neither established pursuant to the terms of Section 154-8, General Code, nor attached to a department under the statutes providing for its creation.

Section 154-2, General Code, provides for the use of the phrase "departments, offices and institutions" when reference is made to "every organized body, office and agency established by the constitution and laws of the state for the exercise of any function of the state government."

The Industrial Commission, under this definition, is one of the "departments, offices and institutions." In view of this it would certainly seem reasonable to assume that if the legislature had intended to subject the Industrial Commission to the provisions of Section 154-20, General Code, it would have used the phrase "departments, offices and institutions" in that section instead of the words "several departments of the state service."

The Ninety-Sixth General Assembly enacted House Bill No. 221 which amended Section 154-20, General Code, effective October 11, 1945. This amendment might be considered pertinent to your inquiry only in respect to its addition of the phrase "of the state service" to follow the words "several departments". In view of the retention of the word "departments," with its established meaning, the inclusion of the phrase "of the state service" can not be considered as broadening the class of employes to which Section 154-20, General Code, has application. Consequently, the above quoted provisions from Section 154-20, General Code, have no application to employees of the Industrial Commission.

Section 871-9, General Code, provides in part as follows:

"The industrial commission of Ohio shall be in continuous session and open for the transaction of business during all business hours of each day and every day, excepting Sundays and legal holidays.* * *"

Section 1465-40, General Code, provides in part as follows:

"The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. * * *"

The board referred to in the above section means the state liability board of awards, which under the provisions of Section 871-12, General Code, was superseded by the Industrial Commission. Therefore, in the light of Section 871-12, General Code, the board referred to in Section 1465-40, General Code, is the Industrial Commission and Section 1465-40, General Code, makes a provision similar to that contained in Section 871-9, General Code, with respect to the hours the Industrial Commission is required to be "in continuous session and open for the transaction of business."

The plan of working hours outlined in your communication does not violate the requirements of Sections 871-9 and 1465-40, General

Code. Your office will be open to the public on Saturday mornings. By virtue of Section 5978, General Code, which establishes Saturday afternoon as a legal holiday, your office need not be open on Saturday afternoons.

Section 154-45, General Code, in assigning powers and duties to the department of industrial relations excepts certain powers and duties which it grants to the Industrial Commission. This section provides in part as follows:

“The Industrial Commission of Ohio shall have full power and authority to administer the workmen’s compensation law, * * *; to perform all duties in connection therewith; * * * to employ and appoint when this act takes effect, and from time to time thereafter, such employees, * * * as the industrial commission may deem necessary to carry on the work; *to completely control all agencies and employees devoted to such administration and to make all arrangements in reference to the work.* The employees shall be the employees of the industrial commission and shall exercise all of the authority conferred upon them by law and *perform the duties assigned to them by the commission.*”

The industrial commission shall have the sole power to select, appoint, prescribe the duties of, control, promote, supervise and remove said employees and fix their salaries or compensation.”
(Emphasis added.)

Of course, this section would not exempt the Industrial Commission from complying with the terms of a statute designed to regulate the hours of its employees. But an examination of the statutes of Ohio fails to disclose any provision which is by its terms related to this matter. In the absence of such a provision it is within the province of the Industrial Commission to prescribe the working hours of its employees.

It is therefore by opinion, in specific answer to your inquiry, that your proposed change in working hours is not in contravention of law.

Respectfully,

HUGH S. JENKINS,
Attorney General