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BUREAU OF UNEMPLOYMENT COMPENSATION, ADMINISTRATOR — AUTHORIZED TO PAY, EXTENT OF ALLOTMENTS MADE BY SOCIAL SECURITY BOARD, IN ADMINISTRATION OF FUND, BILLS FOR EQUIPMENT, PREMIUMS, SUPPLIES, SERVICES AND OTHER FACILITIES FURNISHED BY UNITED STATES EMPLOYMENT SERVICE OF OHIO — CERTIFICATION SHALL BE APPROVED FOR PAYMENT BY PARTY DESIGNATED BY SOCIAL SECURITY BOARD.

SYLLABUS:

The Administrator of the Bureau of Unemployment Compensation is authorized to pay, to the extent of the allotments made to it by the Social Security Board, in the administration fund of the Bureau, the bills for authorized equipment, premises, supplies, services and other facilities furnished the United States Employment Service in Ohio, which are approved and certified for payment by the party designated by the Social Security Board to make such certification.

Columbus, Ohio, April 15, 1942.

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

Dear Sir:

I am in receipt of your letter requesting my opinion, which letter reads as follows: —

“Effective as of January 1, 1942 the Employment Service Division of the Bureau of Unemployment Compensation was absorbed by the Social Security Board and is now federally operated as the United States Employment Service. This Service uses a substantial part of the building at 427 Cleveland Avenue and is in possession of and has charge of all the local offices throughout the state, leases for which offices are held by the state of Ohio for the Bureau of Unemployment Compensation.

The Federal Social Security Board has, under the terms of its approval of the budget for January 1 to June 30, 1942 and the grant of 25% of the approved budget for the administration of the Ohio Bureau of Unemployment Compensation, granted permission to expend funds out of such grant to finance the cost of equipment, premises, supplies, services and the facilities of the United States Employment Service in accordance with in-

structions of such Service pursuant to the policies of the Social Security Board for the operation of national public employment service.

The present appropriation bill passed by the 94th General Assembly (H.B. 665) provides that "In addition to the above items hereby appropriated from the general revenue fund, all monies received from the United States Government for Unemployment Service under the federal Wagner Peysner and Social Security Acts are hereby appropriated to the State Division of Ohio State Employment Service for the purposes provided by law.

I desire your opinion on the following matters: —

Pursuant to the above plan of operation, as Administrator of the Bureau of Unemployment Compensation, I am required to pay the costs of equipment, premises, supplies, services and other facilities incurred by the United States Employment Service out of the funds allocated by the Social Security Board to the state of Ohio for the administration of the Ohio Bureau of Unemployment Compensation.

Have I the authority, under the Ohio law, to pay through the Bureau of Unemployment Compensation, pursuant to the above plan, the costs of equipment, premises, supplies, services and other facilities of the United States Employment Service on vouchers or pay orders approved by such Service out of the funds allocated by the Social Security Board to the state of Ohio for the administration of the Ohio Bureau of Unemployment Compensation?

Provided, under the plan and the authority of the Social Security Board, I am authorized to make the aforesaid payments for the United States Employment Service, does the Bureau, or myself as Administrator, or any employee incur any liability in case of the payment of any item or items erroneously or wrongfully approved for payment by the United States Employment Service? For example, in case a long distance telephone call, charged and certified for payment, when in fact it later develops that such charge should have been a personal charge and not a proper charge for the United States Employment Service to pay. Or, as a further example, in case supplies are purchased and it later develops that the payment, or payments, for same are not approved by federal auditors or state auditors."

The provisions of the General Code, which provide the procedure for the handling of unemployment compensation funds insofar as they are applicable to the question to be answered, are as follows:

Section 1345-3:

"(a) There is hereby created in the state treasury a special

fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the bureau of unemployment compensation. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section 1345-15 of the General Code *shall be expended solely for the purposes and in the amounts found necessary by the social security board for the proper and efficient administration of this act.* The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board, the railroad retirement board and the United States employment service, or from any other source, for such purpose, except that moneys received from the railroad retirement board as compensation for services or facilities supplied to said board shall be paid into this fund or the special "employment service account" thereof, on the same basis as expenditures are made for such services or facilities from such fund and account. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. The treasurer of state shall be liable on his official bond for the faithful performance of his duties in connection with this fund. Any balances in this fund shall not lapse at any time, but shall be continuously available to the bureau of unemployment compensation for expenditure consistent with this act.

(b) A special "employment service account" shall be maintained as a part of the unemployment compensation administration fund *for the purpose of maintaining the public employment offices established pursuant to section 15 of this act and for the purpose of cooperating with the United States employment service.*

(c) If any moneys received after June 30, 1941, from the social security board under title III of the social security act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, are found by the social security board, because of any action or contingency, *to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the social security board for the proper administration of this act,* it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the social security board, the administrator shall promptly report the amount required for such replace-

ment to the governor and the governor shall at the earliest opportunity submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the social security act."

(Emphasis ours.)

Section 15, referred to in the above statute, reads in part as follows:

Section 1343-15.

"The Ohio state employment service is hereby transferred to the bureau of unemployment compensation as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act for the purpose of performing such duties as are within the purview of the act of congress entitled "an act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended. * * * The administrator is directed to appoint the director, other officers, and employees of the Ohio state employment service. Such appointment shall be made in accordance with regulations prescribed by the director of the United States employment service.

All moneys received by this state under said act of congress as amended shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the Ohio state employment service to be expended as provided by this section and by said act of congress. * * *"

In recent years the only appropriation of state moneys to the Bureau of Unemployment Compensation is the sum required of the state to meet the provisions of the Wagner-Peyser Act which sum the Federal Government matches. For example, the appropriation bill, being House Bill No. 665 of the 94th General Assembly, appropriated the following to the Bureau of Unemployment Compensation:

"Ohio State Employment Service Division			
PERSONAL SERVICE —	1941	1942	
A 1. Salaries	\$156,195.00	\$156,195.00	
	<hr style="width: 100%;"/>	<hr style="width: 100%;"/>	
Total Personal Service.....	\$156,195.00	\$156,195.00	\$312,390.00
Total Personal Service and Maintenance....	\$156,195.00	\$156,195.00	<hr style="width: 100%;"/>
Total State Unemployment Compensation Commission — Ohio State Employment Service			\$312,390.00

In addition to the above items hereby appropriated from the General Revenue Fund, all moneys received from the U. S. Government for Unemployment Service under the Federal Wagner-Peyser and Social Security Acts are hereby appropriated to the State Division of Ohio State Employment Service for the purposes provided by law."

The last paragraph of Section 2 of said appropriation act reads as follows:—

(P. 174) "All revenues received from the Federal Government by the state of Ohio, or any of its departments or divisions are hereby appropriated for the purpose for which allotted."

The above appropriation of \$156,195.00 for the year 1941 was matched by the Federal Government under authority of the Wagner-Peyser Act and the moneys were expended during 1941 toward paying the expense of the operation of the Employment Service within the purview of the act of congress entitled "an act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended.

The Federal Government took over the operation of the employment service and offices as of January 1, 1942 and there has been no allotment to the state under the provisions of the Wagner-Peyser Act for 1942 and we understand there will be none. The amount of \$156,195.00, which was appropriated for the year 1942 by the state of Ohio has not and, we understand, will not be used by the Ohio state employment service division.

The entire administrative expense of the Bureau of Unemployment Compensation is now paid out of funds allotted to the state by the Federal Government under title III of the Social Security Act as amended in 1939.

The provisions of the Social Security Act (F.C.A., Title 42, section 301, et seq.) which authorize these allotments, are as follows:

Title 42, Section 501.

"For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated for the fiscal year ending June

30, 1936, the sum of \$4,000,000, for each fiscal year thereafter up to and including the fiscal year ending June 30, 1938 the sum of \$49,000,000, and for the fiscal year ending June 30, 1939, and for each fiscal year thereafter, the sum of \$80,000,000, to be used as hereinafter provided."

Title 42, Section 502.

"(a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each state which has an unemployment compensation law approved by the Board under the Federal Unemployment Tax Act, such amounts as the Board determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Board's determination shall be based on (1) the population of the state; (2) an estimate of the number of persons covered by the state law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the state agency charged with the administration of such law the amount so certified."

Section 42, Section 503 provides that the Board shall make no certification for payment to any state unless it finds that the law of such state includes provisions for nine different specified requirements.

Said section, with requirements (8) and (9), reads as follows:

"(a) The Board shall make no certification for payment to any state unless it finds that the law of such state, approved by the Board under the Federal Unemployment Tax Act, includes provisions for * * *

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Board for the proper and efficient administration of such state law; and

(9) Effective July 1, 1941, the replacement within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in

amounts in excess of, those found necessary by the Board for the proper administration of such state law.”

In the budget approved by the Social Security Board for administration of the Ohio Unemployment Compensation Act, for the period beginning January 1, 1942 and ending June 30, 1942, and the notice of the grants under title III of the Social Security Act of the funds pursuant to such approved budget, is contained the following condition or limitation:

“Funds granted for each category of expense may be expended to finance costs of equipment, premises, supplies, services and facilities provided by the state agency to the United States Employment Service in accordance with instructions of the United States Employment Service pursuant to the policies of the Social Security Board for the operation of a national public employment service; but

(1) No part of this grant is available for identified positions for any period subsequent to the date as of which the United States Employment Service directs that such position be transferred to it;

(2) No part of this grant is available for identified premises, equipment, supplies or services for any period subsequent to the date as of which the United States Employment Service directs the state agency that such premises, equipment, supplies, or services are no longer to be necessary for the proper and efficient administration of the state unemployment compensation law; and

(3) Notwithstanding any prior authorization to the contrary, no part of the funds granted for personal services is available for any position not included in the state agency’s Form ES-101.4 as adjusted by Form ES-106 and the digest of adjustments accompanying the state agency’s budget as approved by the Board for the period commencing January 1, 1942, unless the filling of such position is approved by the regional representative of the Bureau of Employment Security.”

The administrative expenses of the Bureau of Unemployment Compensation are financed by funds furnished by the Federal Government through allotments made by the Social Security Board under the provisions of title III.

It is very apparent, from the above quoted federal statutes and the allowance of the budget for such expenses by the Social Security Board, that the Social Security Board retains supervision of the expenditure

of such funds. This is especially apparent in the provisions of Section 503 wherein one of the requirements is that the expenditure of all such monies is limited solely to the purposes and the amounts found necessary and proper by the Social Security Board.

In the allowance of the budget and the granting of the funds necessary thereunder for the period beginning January 1, 1942 and ending June 30, 1942, specific provision is made in the allotment to finance the cost of equipment, premises, supplies, services and facilities provided by the state agency for the United States Employment Service pursuant to the policies of the Social Security Board. Thus, the Federal Government has furnished funds to the Bureau with which to pay these specified items and under the provisions of the state appropriation act, especially Section 2 thereof, this revenue is appropriated for the purposes for which allotted. As long as funds are allotted for these specific purposes and up to the extent of such allotment, the Administrator of the Bureau of Unemployment Compensation has, therefore, authority to pay these items of expense incurred by the United States Employment Service which are authorized and approved by the Social Security Board or by a representative of the United States Employment Service who is authorized to approve the bills or vouchers for such expenses and certify same to you for payment.

I believe that, for your protection, you should request the Social Security Board to furnish you with written authorization to pay these specific items of expense which are authorized by it upon the approval of the bills or vouchers and certification to you for payment by some designated individual in the employment of the United States Employment Service for the state of Ohio.

It is my opinion that, with this authority, you are authorized to pay, to the extent of the allotment in the administration fund of the Bureau of Unemployment Compensation, the bills or vouchers for authorized equipment, premises, supplies, services and other facilities furnished the United States Employment Service in Ohio, which are approved and certified to you for payment by the party designated by the Social Security Board to make such certification.

Respectfully,

THOMAS J. HERBERT
Attorney General.