

1640.

ASSIGNMENT, SALARY, WAGES OR EARNINGS—LOAN—EMPLOYER-EMPLOYEE—SECTION 6346-13 G. C., IS IN IRRECONCILABLE CONFLICT WITH SECTIONS 6346-7, 6346-11, 6346-12 G. C.—IMPLIEDLY EFFECTS REPEAL OF LATTER SECTIONS—INVALIDATES ALL ASSIGNMENTS OF OR ORDERS FOR WAGES OR SALARIES ENTERED INTO AFTER EFFECTIVE DATE OF SECTION 6346-13 G. C. OR DURING OPERATIVE PERIODS OF ANY OF ITS FORMER ENACTMENTS—EXCEPTION—CONTRACTS BETWEEN EMPLOYERS-EMPLOYEES, ANY LABOR UNION AS TO CHECK-OFF ON WAGES AGREED UPON—PROVISIONS SECTION 6346-8 G. C. DO NOT EXTEND TO ANY VIOLATIONS OF SECTION 6346-13 G. C.

SYLLABUS:

1. *Section 6346-13, General Code, is in irreconcilable conflict with sections 6346-7, 6346-11 and 6346-12, General Code, and thereby impliedly effects a repeal of the latter sections by making invalid all assignments of, or orders for wages or salaries entered into after the effective date of section 6346-13 or during the operative periods of any of its former enactments. Contracts or agreements between employers and their employees, or as between employers, employees, and any labor union as to any check-off on the wages of such employees as may be agreed upon, are excepted.*

2. *The provisions of section 6346-8, General Code, do not extend to any violations of section 6346-13, General Code.*

COLUMBUS, OHIO, December 30, 1939.

HON. PETER CATRI, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“One or two of the local companies have for sometime past, been operating a loan association, whose purpose is to loan money to their employees, and take an assignment of their wages. These loan associations are cooperative, and the sole object of creating them has been to keep their employees away from loan sharks.

Section 6346-13, General Code, which became effective recently provides:

‘Notwithstanding the provisions of Section 6346-12 of the

General Code of Ohio, no assignment of, or order for wages or salary shall be valid if made after this section goes into effect. Nothing herein shall effect or invalidate any contract or agreement between the employers and their employees, or as between employers, employees and any labor union as to any check-off on the wages of such employee as may be agreed upon.'

Assuming that the loan is made as provided by sections 6346-7, 6346-11 and 6346-12, General Code, my question is: Does Section 6346-13, General Code, make all wage assignments executed after the effective date of said section, invalid, and the making of the same a criminal offense?"

Section 6346-7, General Code, referred to in your inquiry, was enacted in its present form by the 81st General Assembly on May 7, 1915 (106 O. L. 281), and in so far as pertinent to your inquiry is as follows:

"No assignment of any salary, wages or earnings, or any part thereof given to secure a loan shall be valid unless the same shall be in writing, signed in person by the person making the same; and if such person is married and living with husband or wife, signed also by the husband or wife of such person, as the case may be. Nor shall any such assignment be valid unless the same shall be in writing and made to secure a debt contracted simultaneously with the execution of such assignment, with all blank spaces therein filled in with ink or typewriting, together with the date, names of the assignor and assignee, the amount for which such assignment is made, together with the rate of interest charged.

The term assignment as used in this section shall include every instrument purporting to transfer an interest in or any authority to collect the wages, salary or earnings of such person. Any assignment of wages, salary or earnings, made in accordance with the provisions of this section shall bind the wages, salary or earnings earned or to be earned by the assignor until the loan secured by such assignment and interest thereon is fully paid, but no assignment or conveyance of wages, salary or earnings to be earned in the future given to secure a loan shall be binding for a sum in excess of fifty percent, of the amount due or to become due the person making such assignment.

* * *

A sworn copy of such assignment so filed together with a statement of the amount due filed with any employer of the assignor shall bind not exceeding fifty per cent. of any salary, wages or earnings due or to become due such assignor from the

time the same is filed with such employer until any such loan and interest is fully paid and discharged.”

Section 6346-11, General Code, was enacted by the 88th General Assembly on March 27, 1929 (113 O. L. 43). It states that the payment of three hundred dollars or less in money, credit, goods or things in action as consideration for an assignment of wages, shall be deemed a loan on salary or wages.

Section 6346-12, General Code, was enacted in its present form by the 88th General Assembly on April 4, 1929 (113 O. L. 479). It requires wage assignments to be in writing and also signed by the husband or wife of the borrower, if married, and limits the total amount which may be assigned to fifty percent of the wages of a single person and twenty-five percent of the wages of a married person.

Section 6346-13, General Code, was originally enacted by the 90th General Assembly, on June 8, 1933 (115 O. L. 435). So far as pertinent hereto, it was in its present form except for the addition of a provision for its expiration on April 1, 1935. It was reenacted in 1935, expiring on April 1, 1937, and in 1937 expiring on April 1, 1939, and was enacted in its present form, as quoted in your inquiry, effective June 2, 1939 (118 v. 295). Until enacted in its present form, section 6346-13 in each of its form enactments was but temporary legislation, making wage and salary assignments invalid, if made during the effective dates of the several enactments. In its present form, such assignments are permanently invalidated.

Sections 6346-7, 6346-11, and 6346-12, supra, all deal with and provide the conditions under which loans may be secured and paid by wage assignments. Section 6346-13, subsequently enacted, makes all wage assignments invalid if made after its effective date, to-wit, June 2, 1939. The latter section is thus irreconcilably in conflict with the former sections and under the rules of statutory construction effects a repeal of the former sections so far as they are in conflict with section 6346-13. The general rule governing repeals of statutes by implication is stated in 37 O. Jur., page 395, section 135, in the following language:

“The fact that an act does not contain either a general or specific repealing clause will not prevent it from repealing a prior inconsistent act, for an act may be repealed by implication as well in direct terms. If an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates, without any repealing clause, as a repeal of the first to the extent of the irreconcilable inconsistency. Hence, it is a rule that later expressions of legislative will control where two statutes are in irreconcilable conflict.”

In your inquiry you indicate that a cooperative loan association has been formed apparently sponsored and controlled by one or more of your local companies for the benefit of their employes. Under these circumstances, I assume that the loan association is a separate entity engaged in the laudable business of making loans at cost. Since the borrowing employes are employes of the sponsoring companies, rather than the loan association, the applicability and interpretation of the last sentence of section 6346-13 is not involved.

Your second question relates to the criminal liability of the loan association for violation of section 6346-13, *supra*. Criminal penalties for violations of the Small Loan Act are found in section 6346-8, General Code. This section was originally enacted by the 81st General Assembly on May 7, 1915 and amended in its present form by the 82nd General Assembly on March 21, 1917 (107 O. L. 506, 510), as a section of an act known as Senate Bill No. 211, the section now reading:

“Any person, firm, partnership, corporation or association, and any agent, officer or employe thereof, *violating any provision of this act*, shall for the first offense be fined not less than fifty dollars nor more than two hundred dollars and for a second offense not less than two hundred nor more than five hundred dollars and imprisoned for not more than six months. The commissioner of securities upon such second conviction shall revoke any license theretofore issued to such person, firm, partnership, corporation or association. Any instruments taken in connection with the transactions upon which the conviction is made, shall be illegal, void and of no effect, and it shall then be the duty of the commissioner of securities to so notify the borrower in writing. Any charge of interest paid in excess of that provided herein may be recovered by the payer in an action at law.” (Italics the writer’s.)

The purpose of Senate Bill No. 211, *supra*, was as disclosed by the title:

“To provide for the appointment of a commissioner of securities, transferring to such commissioner of securities and empowering such commissioner of securities to execute all the powers and duties vested in the superintendent of banks by the act passed April 28, 1913, entitled: ‘An act to regulate the sale of bonds, stocks and other securities, and of real estate not located in Ohio, and to prevent fraud in such sales.’ (103 Ohio Laws 743) and all amendments thereto; and by the act passed May 7, 1915, entitled: ‘An act to amend sections 6346-1, 6346-2, 6346-3, 6346-4, 6346-5, 6346-6 and 6346-7, inclusive, of the General Code, and add supplemental sections 6346-8, 6346-9 and

6346-10, inclusive. Providing for the regulation and licensing of the loaning of money, without security upon personal property, and of purchasing or making loans upon salaries or wage earnings.' (106 Ohio Laws 281) and all amendments thereto, and to amend sections 6373-3, 6373-7, 6373-24, 6346-1, 6346-2, 6346-3, 6346-8, 6346-9 and 6346-10 of the General Code."

This act embraces sections 744-14, 744-24, 6346-1 to 6346-4, 6346-8 to 6346-10, 6373-3, 6373-7 and 6373-24, General Code. A violation of any provision contained in the above sections must be considered as "violating any provision of this act", subjecting the violator to the penalties of section 6346-8, *supra*. Section 6346-8 being a penal section, must be strictly construed in favor of the accused, as set forth in 37 O. Jur., 744, section 420:

"It is a well-settled general rule, recognized by the General Code, that a strict construction is to be accorded to penal statutes. More accurately, it may be said that such laws are to be interpreted strictly against the state and liberally in favor of the accused. On the other hand, exemptions from such restrictive provisions are liberally construed."

In the case of *State v. Meyers*, 56 O. S. 340, it is said on page 350 of the opinion:

"Persons cannot be made subject to such statute by implication. Only those transactions are included in them which are within both their spirit and letter; and all doubts in the interpretation of such statutes are to be resolved in favor of the accused."

Section 6346-13, *supra*, in its original enactment was a part of the act passed by the 90th General Assembly in 1933, known as House Bill No. 51, the purpose of which as stated in its title was:

"To amend sections 10253, 10271, 10272, 11721, 11725, 11729 and 11781, and to supplement sections 6346 and 11728 by the enactment of supplemental sections 6346-13, 11725-1 and 11728-1 of the General Code; relative to exemption from execution and attachment, and to declare an emergency."

This act was passed as an emergency act, the reasons therefor being stated in section 4, which reads:

"This act is hereby declared to be an emergency and necessary for the immediate preservation of the public peace, health

and safety. The reason for such necessity is that the present economic conditions resulting in widespread curtailment of wage earnings and in large numbers of citizens receiving aid from public funds make it necessary that the demand for public relief be held down so far as possible by permitting wage earners to retain a sufficient part of their earnings to enable them to subsist without receiving public aid."

Not only are the purposes of House Bill No. 51 materially different from the purposes of Senate Bill No. 211, *supra*, containing the enactment of the present section 6346-8, but it should be further noted that of the several sections of House Bill No. 51 section 6346-13 is the only one that is directly related to the Small Loan Act. Applying the rule of liberal construction in favor of the accused, it may be fairly said that the provisions of section 6346-8 cannot be extended to include the prohibitions of section 6346-13. The former section specifically states that it applies to violations of "any provision of *this act*," obviously referring to and including the Small Loan Act as then in force which included numerous provisions for the making and enforcing of wage assignments. Then, in 1933, because of adverse economic conditions, House Bill No. 51 was enacted relating primarily to amendments of attachment and garnishment proceedings and exemptions from execution, but also contained section 6346-13, which in effect acted as a repeal by implication of the wage assignment provisions of the Small Loan Act. It seems evident that the case you have submitted comes within the rule of *State v. Meyers*, *supra*, the syllabus of which is:

"A statute defining a crime or offense cannot be extended, by construction, to persons or things not within its descriptive terms, though they appear to be within the reason and spirit of the statute."

In conclusion, and in specific answer to your inquiry, it is my opinion that:

1. Section 6346-13, General Code, is in irreconcilable conflict with sections 6346-7, 6346-11 and 6346-12, General Code, and thereby impliedly effects a repeal of the latter sections by making invalid all assignments of, or orders for wages or salaries entered into after the effective date of section 6346-13 or during the operative periods of any of its former enactments. Contracts or agreements between employers, and their employes, or as between employers, employes, and any labor union as to any check-off on the wages of such employes as may be agreed upon, are excepted.

2. The provisions of section 6346-8, General Code, do not extend to any violations of section 6346-13, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1641.

TAXES AND ASSESSMENTS—DELINQUENT—WHITTEMORE ACT—WHERE UNDER SECTION 2672-3 G. C. ELECTION MADE TO PAY SAME—AT TIME ENTRANCE INTO WRITTEN UNDERTAKING, FIRST OF TEN ANNUAL INSTALLMENTS DUE AND PAYABLE—SECOND INSTALLMENT DUE AND PAYABLE DURING NEXT FOLLOWING COLLECTION PERIOD, SECOND HALF CURRENT REAL ESTATE TAXES—REMAINING INSTALLMENTS DUE AND PAYABLE ANNUALLY THEREAFTER.

SYLLABUS:

When an election is made to pay delinquent taxes and assessments as provided in section 2672-3, General Code, the first of the ten annual installments is due and payable at the time of entering into the written undertaking. The second installment is due and payable during the next following collection period of the second half of current real estate taxes. The remaining installments are due and payable annually thereafter.

COLUMBUS, OHIO, December 30, 1939.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of a communication from your office which reads as follows:

“I am again calling upon you to render an opinion on a tax bill recently passed by the Legislature of the State of Ohio. This bill has caused many difficult questions of law to arise. The bill I refer to is Senate Bill No. 3 commonly called the Whittemore Act. From reading the various provisions of this act we have come to a serious question involving the payments under the installment payment plan provided in the said act.

Our question is this—‘When a contract is entered into during the December collection and one-tenth of the delinquent tax along with the current tax is paid at that time, should the second annual installment of one-tenth be paid the following June