

thereafter placed in the Children's Home of that particular county, such children, despite the death of their father and even though their mother has acquired a legal settlement in another county, retain their same legal settlement, and such county of their legal settlement is responsible for their care and support as paupers.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2187.

APPROVAL, BONDS OF LIBERTY RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$4,500.00.

COLUMBUS, OHIO, January 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2188.

APPROVAL, BONDS OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, January 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2189

SALARY—COMMON LABORERS EMPLOYED BY STATE EXEMPTED FROM SALARY REDUCTION WHEN—AMENDED SENATE BILL NO. 5 OF 89TH GENERAL ASSEMBLY APPLICABLE WHEN.

SYLLABUS:

1. State departments may not alter, nullify or extend the operation of a state statute by departmental order, rule or regulation.

2. The provisions of Amended Senate Bill No. 5 of the 89th General Assembly, Third Special Session, do not apply in the case of laborers who receive less than \$3.20 per day computed upon a daily basis nor do they contain any inhibition against paying laborers more than that amount. If, however, they are paid more than \$3.20 per day, they are not excluded from the provisions of the act unless their employment occurred since January 1, 1933.

3. The method prescribed for making reductions in salaries in Amended

Senate Bill No. 5 of the 89th General Assembly, Third Special Session, is applicable to salaries for positions in the various departments of the state government in existence or whose classification and compensation had been prescribed as of December 31, 1932, and does not apply to new positions and new employment in the various state departments created since the effective date of that act.

COLUMBUS, OHIO, January 20, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you cite Amended Senate Bill No. 5 in full and state that the Highway Department has adopted standard minimum wages over the state on your regular maintenance operations as follows:

Group 1			
Skilled workers	\$1.20	per hour	
Group 2			
Semi-skilled workers	1.00	" "	
Group 3			
Semi-skilled workers80	" "	
Group 4			
Semi-skilled workers65	" "	
Group 5			
Common labor—Cuyahoga County.....	.60	" "	
Hamilton County52½	" "	
Lucas County52½	" "	
Mahoning County52½	" "	
All other counties50	" "	

I note that you say that these amounts are arrived at in co-operation with the Civil Works Administration and the Public Works Administration, that the average working hours per week are thirty and that the funds will come from the gasoline fund of the state of Ohio.

Your question then reads as follows:

“The question is are these workers, skilled and unskilled, as set forth in the foregoing minimum wage schedule, where paid from state funds, who are neither officers nor salaried employees but some of whom are in the classified service and whose computed compensation exceeds a daily rate of \$3.20 per day, subjected to the reduction provided in this act as follows:

‘* * * or if for any other reason his compensation cannot be justly rated on a yearly basis, the reduction herein provided for shall be made at the rate of 5% each pay day on the first \$1,000 or any portion thereof earned within any fiscal year,’ etc.”

I assume that you intend to ask by this question whether or not you can pay in excess of \$3.20 per day for common labor, and also whether or not the section of the statute which you quote in your question applies in cases other than labor.

Section 1 of Amended Senate Bill 5, providing that certain reductions shall be made, contains the following proviso:

"Provided further, that the provisions of this act shall not apply to persons engaged in common labor. Those engaged in common labor shall be deemed to be persons who are neither officers nor employees in the classified service and whose compensations, computed at a daily rate, shall not exceed \$3.20 per day."

The effect of the foregoing proviso is, obviously, that the act shall not apply to persons whose daily compensation does not exceed \$3.20 per day, who are neither officers nor employees in the classified service. I find no inhibition therein against paying common labor more than \$3.20 per day. If, however, this is done, then such employes are not excluded from the provisions of the act unless they were employed since January 1, 1933, as will be hereinafter shown.

The reduction referred to in the section of the code to which you refer in your letter was a reduction in existing salaries computed on a basis of salary received in December, 1932, or for the last month of employment during 1932, and does not apply to persons employed since the passage of the act. It would be impossible to compute a reduction in salaries which were not in existence at the time the act was passed and could not have been within its contemplation. It was the purpose of the state to reduce existing salaries at the time of its passage. It contains no provisions as to applications to future employment of persons in new positions and therefore cannot be made to apply to such situations. It would be absurd to say that the act contemplated the state employing an individual in a new position at a fixed salary and then making a reduction in that salary in keeping with Amended Senate Bill No. 5.

It is therefore my opinion that the section of the statute quoted in your question is not applicable to the situation you describe.

Summarizing, it is my opinion that:

1. State departments may not alter, nullify or extend the operation of a state statute by departmental order, rule or regulation.

2. The provisions of Amended Senate Bill No. 5 of the 89th General Assembly, Third Special Session, do not apply in the case of laborers who receive less than \$3.20 per day computed upon a daily basis nor do they contain any inhibition against paying laborers more than that amount. If, however, they are paid more than \$3.20 per day, they are not excluded from the provisions of the act unless their employment occurred since January 1, 1933.

3. The method prescribed for making reductions in salaries in Amended Senate Bill No. 5 of the 89th General Assembly, Third Special Session, is applicable to salaries for positions in the various departments of the state government in existence or whose classification and compensation had been prescribed as of December 31, 1932, and does not apply to new positions and new employment in the various state departments created since the effective date of that act.

Respectfully,

JOHN W. BRICKER,

Attorney General.