

1094

UNEMPLOYMENT COMPENSATION, OHIO BUREAU — §4141.09 RC AMENDED DURING BIENNIUM BEGINNING JULY 1, 1957—AM. H. B. 939, 102nd GENERAL ASSEMBLY—REQUISITIONS AS PROVIDED IN PUBLIC LAW 567, SECTION 903, 83rd CONGRESS, SECOND SESSION, FOR PERMANENT CITY OFFICES FOR BUREAU.

SYLLABUS:

The provision in Section 4141.09, Revised Code, limiting to use for payment of benefits all moneys requisitioned by the Ohio bureau of unemployment compensation from the "unemployment trust fund" in the United States Treasury, is expressly amended, during the biennium beginning July 1, 1957, by the provision in Amended House Bill No. 939, 102nd General Assembly, authorizing requisitions from that fund, as provided in Section 903, Public Law No. 567, 83rd Congress, Second Session, in specified sums for providing certain permanent city offices for the bureau and appropriating such moneys, when received from the federal authorities, for such purpose during the current biennium.

Columbus, Ohio, September 27, 1957

Hon. James R. Tichenor, Administrator
Bureau of Unemployment Compensation
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 4141.09 (D) (sic), Revised Code, provides in part:

“The benefit account shall consist of all moneys requisitioned from this state's account in the Unemployment Trust Fund. Moneys so requisitioned shall be used solely for the payment of benefits and for no other purpose.’

“Amended H. B. No. 939, generally known as the A & B Bill, which was passed in the last session of the legislature included appropriations for the purpose of providing permanent city offices to be used by the Bureau of Unemployment Compensation in the cities of Cincinnati, Dayton, and Youngstown. The following language is used in this appropriation bill pertaining to the withdrawal of funds for the purpose mentioned above:

“Notwithstanding the provisions of Section 4141.09 of the Revised Code, the Administrator of the Bureau of Unemployment Compensation, at the request of the Department of Public Works is hereby authorized to withdraw from the State's Unemployment Trust Fund designated in the Employment Security Financing Act of 1954, such sums as are from time to time needed to carry out the provisions hereof, not to exceed, however, at any time either the amount in said fund available pursuant to said Employment Security Administrative Financing Act of 1954 or the amount herein appropriated for any stated location.’

“We have been advised by the Legislative Service Commission that there is no question as to the legality and effect of Amended H. B. No. 939 in regard to its superseding the limitations set forth in section 4141.09 (D), Revised Code. However, the United States Department of Labor has raised the following question and they insist upon a formal interpretation by your office to the effect that Amended H. B. No. 939 can be construed, under the laws of Ohio, as a pro tanto amendment to section 4141.09 (D), Revised Code. In other words, they want to be assured that Amended H. B. No. 939 legally permits the use of money in the trust fund for purposes other than those outlined in Section 4141.09 (D), Revised Code.’”

The precise question thus raised, *i. e.* whether the appropriation item in Am. H. B. No. 939, quoted in your inquiry, to be regarded as a "*pro tanto*" amendment to Section 4141.09 (D), Revised Code, involves only a simple question of statutory construction with respect to which no conclusion is possible except that which is indicated by the plain terms of such appropriation item. However, because the federal authorities concerned have requested a formal ruling by this office on the matter, it becomes appropriate to discuss generally the source and nature of the funds in question, and the pertinent federal and state statutes governing their use.

The funds in question appear to have been raised initially as employer contributions, such contributions actually being a tax on employers, the levy of which, under state law, is made under the provisions of Section 4141.25, Revised Code.

In Section 4141.09, Revised Code, it is provided that all such contributions collected by the Ohio authorities are to be paid into the "unemployment compensation fund," established in that section.

It is further provided in Section 4141.09, *supra*, that the treasurer of state shall maintain within the unemployment compensation fund three separate accounts, *i.e.* (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. This section then provides further, in Division (C) that:

"* * * All moneys payable to the unemployment compensation fund, upon receipt thereof by the administrator, shall be forwarded to the treasurer of state, who shall immediately deposit them in the clearing account. Refunds of contributions payable pursuant to division (E) of this section may be paid from the clearing account upon vouchers authorized and signed by a deputy or other employee of the administrator charged with the duty of keeping the record of the clearing account and with the preparation of vouchers for the payment of refunds to persons entitled thereto. After clearance thereof, all moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the 'Social Security Act,' any law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys so requisitioned shall be used

solely for the payment of benefits and for no other purpose. Moneys in the clearing and benefit accounts may be deposited by the treasurer of state, under the direction of the administrator, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund."

It is thus to be seen that with the single exception of funds required for disbursement from the clearing account on account of refunds of contributions, *i. e.* refunds to taxpayers, *all* such funds collected under this tax levy are transmitted by the treasurer of state of Ohio to the United States treasury, where it is credited to "the account of this state in the unemployment trust fund."

Note here that this unemployment trust fund in the United States treasury is a fund quite separate and distinct from the unemployment trust fund maintained by the treasurer of the state of Ohio, as required by Section 4141.09, Revised Code. Turning now to the applicable federal statutes we may note the following provision in Section 901, of the Employment Security Administrative Financing Act of 1954, Public Law 567, 83rd Congress, Second Session:

"Sec. 901. (a) (1) There are hereby appropriated to the Unemployment Trust Fund, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1954, and for each fiscal year thereafter, an amount equal to the amount by which—

"(A) 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act and covered into the Treasury; exceeds

"(B) the sum of (i) the employment security administrative expenditures for such year, (ii) the refunds of such tax (including interest on such refunds) made during such fiscal year, and (iii) the amounts appropriated by section 1202 (b) for such fiscal year. * * *

This reference to the "tax * * * received * * * under the Federal Unemployment Tax Act and covered into the Treasury," indicates that we are here concerned with funds raised by federal, rather than state, taxation. See Title 26, Chapter 23, Section 3301., *et seq.*, U. S. Code. Indeed that conclusion is compelled by the reference, noted below, in Section 903 of the Administrative Financing Act, which provides for grants to the states for administrative purposes.

Section 903, for this same act which reads in part as follows :

“Sec. 903. (a) So much of any amount transferred to the Unemployment Trust Fund at the close of any fiscal year under section 901 (a) as is not credited to the Federal Unemployment account under section 902 shall be credited (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund. * * *”

In this same section, in the sub-paragraph (c) (2), it is provided :

“A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it *for the administration of its unemployment compensation law and public employment offices* if and only if—

“(A) the purposes and amounts were specified in the law making the appropriation,

“(B) the appropriation law did not authorize the expenditure of such money after the close of the two-year period which began on the date of enactment of the appropriation law.

“(C) the money is withdrawn and the expenses are incurred after such date of enactment, and

“(D) the appropriation law limits the total amount which may be so used during a fiscal year to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of such State pursuant to subsection (a) during such fiscal year and the four preceding fiscal years, exceeds (ii) the aggregate of the amounts used by the State pursuant to this paragraph and charged against the amounts credited to the account of such State during any of such five fiscal years.”

(Emphasis added.)

Although you supply no information on the point, it is my assumption that there is no problem in the instant case of meeting the conditions thus imposed in sub-paragraphs (A), (B), (C) and (D), *supra*.

Turning again to the state statutes, we have already noted the following provision in Division (C) of Section 4141.09, Revised Code :

“* * * The benefit account shall consist of all moneys requisitioned from this state’s account in the unemployment trust fund. Moneys so requisitioned shall be used solely for the payment of benefits and for no other purpose. * * *”

This provision regarding the “state’s account in the unemployment trust fund” undoubtedly has reference to the fund of that name in the

United States treasury. Thus the question is raised whether any funds to be requisitioned could be used for administrative purposes.

This provision in Section 4141.09, *supra*, must be considered *in pari materia* with the following provision in Section 4141.10, Revised Code:

“(A) There is hereby created the unemployment compensation administration fund as a special fund in the state treasury. All moneys which are deposited or paid into this fund are available to the bureau of unemployment compensation. All moneys in this fund which are received from the United States or any agency thereof or which are appropriated by this state for the purposes described in section 4141.04 of the Revised Code shall be expended solely for the purposes and in the amounts found necessary by the proper agency of the United States for the proper and efficient administration of sections 4141.01 to 4141.46, inclusive, of the Revised Code. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States or any agency thereof, including the proper agency of the United States, 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, provided for in division (B) of this section, 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 are other special funds in the state treasury. * * *”

It may be noted that the language quoted above in Section 4141.10, Revised Code, is general in scope whereas Section 4141.09, Revised Code, refers to moneys requisitioned from a particular account in the United States treasury. Accordingly, it may well be thought that the general language in Section 4141.10, Revised Code, referring to “all moneys in this fund which are received from the United States” is limited by the special provision in Section 4141.09, Revised Code, and so would exclude moneys requisitioned from the unemployment trust fund in the United States treasury.

However this may be, we are plainly here faced with an irreconcilable conflict between (1) the limitation above pointed out in Section 4141.09, Revised Code, as to the purposes for which moneys so requisitioned from the federal unemployment trust fund may be expended, and (2) the plain

provisions of the appropriation item in Am. H. B. No. 939, 102nd General Assembly.

In such appropriation act, the use of the language, "notwithstanding the provisions of Section 4141.09 of the Revised Code," makes crystal clear the legislative intent that so far as the appropriation made in this item is concerned, the limitation above pointed out in Section 4141.09, Revised Code, is to have no application.

It is quite possible that the question here presented by the federal authorities stems from some doubt as to the force and effect of an appropriation item in the face of a conflicting provision in the permanent statutes of the state. In this connection, we may note first the following provision in Section 22, Article II, Ohio Constitution:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation *made by law*; and no appropriation shall be made for a longer period than two years."

(Emphasis added.)

At this point it should be noted that the appropriation here in question, in Am. H. B. No. 939, *supra*, is made not from the United States treasury but from the Ohio treasury. In this connection it was pointed out in Opinion No. 1455, Opinions of the Attorney General for 1952, page 370, that when a grant of federal funds is made to the state for a particular purpose, "such funds when received by the state, become state funds." Moreover, in Section 903 (c) (2) of Public Law 567, *supra*, it will be noted that the federal statute, as a condition of the grant here in question, has provided that the state may make a specific appropriation of "money withdrawn from its account;" and this, of course, is a clear recognition of the fact that when the grant has been made, and funds have been received by the state, such funds become state funds and thus subject to appropriation by the state legislature.

Referring again, then, to Section 22, Article II, Ohio Constitution, it will be noted that appropriations from the state treasury can be made only *by law*. Such a law, although limited in its operative effect to a period of two years, is nevertheless, during that period, a law of force and dignity equal to every other state law. Accordingly, since by its own terms it purports to be a *pro tanto* limitation, or amendment, of a temporary nature, of Section 4141.09, Revised Code, it must clearly be given that effect during such period. As I see the matter, this conclusion is compelled

by the plain language of the appropriation account and it is impossible to construe it otherwise than in accordance with its plain meaning. *Slingluff v. Weaver*, 66 Ohio St., 621.

Accordingly, in specific answer to your inquiry, it is my opinion that the provision in Section 4141.09, Revised Code, limiting to use for payment of benefits all moneys requisitioned by the Ohio bureau of unemployment compensation from the "unemployment trust fund" in the United States Treasury, is expressly amended, during the biennium beginning July 1, 1957, by the provision in Amended House Bill No. 939, 102nd General Assembly, authorizing requisitions from that fund, as provided in Section 903, Public Law No. 567, 83rd Congress, Second Session, in specified sums for providing certain permanent city offices for the bureau and appropriating such moneys, when received from the federal authorities, for such purpose during the current biennium.

Respectfully,

WILLIAM SAXBE

Attorney General