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METROPOLITAN HOUSING AUTHORITY — NOT SUBJECT TO PAYMENT UNEMPLOYMENT CONTRIBUTIONS — MAY NOT ELECT TO BECOME SUBJECT TO OHIO UNEMPLOYMENT COMPENSATION LAWS — SECTIONS 1078-29 ET SEQ., 1345-4 G.C.

SYLLABUS:

Metropolitan housing authorities, created under Section 1078-29, et seq., General Code, are not subject to the payment of unemployment contributions imposed by Section 1345-4, General Code, and such housing authorities may not elect to become subject to the unemployment compensation laws of Ohio.

Columbus, Ohio, June 30, 1941.

Hon. Herschel C. Atkinson, Administrator,
Bureau of Unemployment Compensation 427 Cleveland Avenue,
Columbus, Ohio.

Dear Sir:

I have your request for my opinion which is as follows:

“Are metropolitan housing authorities, existing under the Housing Authority Law (Sections 1078-29 to 1078-60, Ohio General Code), employers within the meaning of Section 1345-1b(1), Ohio General Code, and are they liable for the tax provided for by Section 1345-4, Ohio General Code?”

Should you find such Authorities not subject to Sections 1345 — 1346, Ohio General Code, may they, by virtue of Section 1345-1b(3) voluntarily elect to become subject to the Ohio Unemployment Compensation Act?”

To reach an opinion on the question you have asked it is first necessary to examine the statutes imposing the payment of unemployment contributions on wages paid for employment as defined by the Act and the pertinent sections granting exemptions from the payment of contributions.

By Section 1345-4, General Code, there is levied a tax called contributions upon wages paid by those employers who have three or more persons in employment. The word "employment" is defined by Section 1345-1c as:

" * * * service * * * performed for remuneration under any contract of hire, written or oral, express or implied. * * * "

Under Section 1345-1c(E), General Code, the particular services which are not to constitute employment under the law are found and sub-heading (4) under that section is as follows:

"Service performed in the employ of any governmental unit, municipal or public corporation, political subdivision, or instrumentality of the United States or of one or more states or political subdivisions in the exercise of purely governmental functions."

It now in turn becomes necessary to examine the statutes authorizing the creation of metropolitan housing authorities and which give to such authorities their powers and duties to determine if such are within the exemption provided by the last quoted section. Because of the great length and complexity of the sections authorizing metropolitan housing authorities, it is expedient, for the greater part, that the contents of such sections be summarized here rather than repeated in complete text.

Section 1078-30, General Code, states the purpose of the housing authority law in the following words:

"In order to make necessary provision for the preservation of the public health, morals, safety and welfare, and in order to facilitate and provide proper sanitary housing conditions and accommodations for families of low incomes, and to provide for the elimination of congested and unsanitary housing conditions now existing in certain slum areas of the state which are a menace to health, safety, morals and public welfare, it is expedient to create the public authorities hereinafter provided for with the powers and duties hereinafter enumerated."

The same section continues to provide that when the State Board of Housing shall have determined that there is need for a housing authority in certain territorial areas as specified by the statute, a copy of the resolution of that body declaring the existence of the housing authority shall be sent to each of the following: the probate court, the common pleas court, the board of county commissioners of the county concerned and

the mayor of the most populous city in the territory covered by the authority. Each of the above is authorized to appoint one member of the housing authority excepting the mayor, who is authorized to appoint two members, all of whom serve without compensation. A housing authority so organized is authorized by Section 1078-31, General Code, to appoint counsel and employes and fix their terms of office and compensation. The succeeding section, Section 1078-32, General Code, forbids any member of the authority or its employes to have any interest in contracts for property, materials or services to be acquired by the authority.

The county commissioners of the county in which the housing authority is situated are given the power by Section 1078-33, General Code, to loan money, not exceeding \$20,000, for the purpose of organization and preliminary work of the authority. Sections 1078-34, 1078-34a and 1078-35, General Code, contain grants of power to the housing authority which constitute a housing authority a "body corporate and politic," with power to sue and be sued, to have corporate succession, to receive grants, to conduct examinations and investigations and for that purpose to subpoena and require the attendance of witnesses, to issue commissions for the examination of witnesses not in attendance before the authority and to administer oaths, to determine what constitutes slum areas and undertake to provide housing projects for such areas and for that purpose to acquire land and property, to borrow money and to exercise a limited power of eminent domain.

Section 1078-36, General Code, provides as follows:

"All property, both real and personal, acquired, owned, leased, rented or operated by the housing authority shall be deemed public property for public use, and all accounting and other transactions of the authority shall be subject to the inspection and approval of the bureau of inspection and supervision of public offices of the state of Ohio, which shall transmit its report to the state board of housing."

Other sections of the General Code extending through Section 1078-61a, govern among other things, the letting of contracts on bids, expenditures, the manner of operation of property, the issuance of bonds and the investment of funds of such housing authorities.

While many other statutory powers and duties of metropolitan housing authorities might be mentioned, the recitation of the above is sufficient to demonstrate their nature.

The possession of the above enumerated powers is inconsistent with such housing authorities being considered anything but a branch of the government itself, or stated otherwise, a governmental unit engaged in governmental functions and as such, within the exemption from the payment of unemployment contributions provided by Section 1345-1c (E)(4), General Code.

The above conclusion is approached in Opinion No. 3262, Opinions of the Attorney General for the year 1934, Vol. II, page 1409, where it was determined that housing authorities are agencies of the state and so exempt from taxation. A like conclusion was reached by the Supreme Court of Missouri in the case of Laret Inv. Co. v. Dickman, reported in 134 S.W. (2nd) 64, wherein it was determined that a metropolitan housing authority organized under laws similar to the laws here under consideration was a municipal corporation and so exempt from taxation.

There remains now to be considered the question of whether a housing authority may, by the terms of Section 1345-1b(4), General Code, elect to become an employer subject to the Unemployment Compensation Act. It might well be said that by virtue of the fact that the Legislature, by the enactment of Section 1345-1c(E)(4) has exempted such bodies as housing authorities from the operation of the unemployment compensation laws, that the statement of such exemption by the Legislature is the equivalent of a legislative declaration that such body shall not voluntarily, or otherwise, comply with that Act.

However, the problem can be solved by the application of the elemental rule of public law that public bodies created by law to carry out some governmental purpose have only such powers as are specifically granted by law and such other implied powers as are necessary to carry into operation the specifically granted powers.

In my opinion No. 3188, issued December 31, 1940, I said in speaking of metropolitan housing authorities:

“That statutory officers, boards and commissions have such powers, *and only such powers*, as are expressly conferred by law and impliedly necessary to carry the express powers into effect, is so well settled in this state that the citation of authority is unnecessary. Probably no principle of public law is better settled. And it is equally well settled that when the question to be determined is concerned with the existence or non-existence

of the power and authority to expend public moneys, any doubt as to the legality and propriety of such expenditures must be resolved against the existence of the power. The third branch of the syllabus in *State, ex rel. v. Pierce, Auditor*, 96 O.S. 44 (1917), reads:

‘In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.’

See also *Peters v. Parkinson, Treasurer*, 83 O.S. 36 (1910).

While it might be urged that, since the funds derived from tolls are not raised by taxation and are not in the State treasury, they are not public moneys and therefore the above rule has no application, such a contention is not tenable. Quite obviously the state and the public have a very direct and substantial interest in these funds. * * *

With reference to the character, powers, authority and duties of the Bridge Commission and a metropolitan housing authority, the analogy is complete.”

An examination of all the statutes granting authority to metropolitan housing authorities discloses that such authorities have not been granted by the Legislature the express authority to expend their funds for the payment of unemployment contributions and it is equally certain that such a grant of authority can not be implied from specifically granted powers as necessary for such bodies to carry out the purpose of their creation. In the absence of such specific authority or necessarily implied authority no other conclusion can be reached but that metropolitan housing authorities, not having been so authorized, do not have the power to expend their funds for the payment of unemployment contributions and, therefore, may not elect to become subject to the unemployment compensation laws.

In view of the above, I must conclude and it is my opinion that metropolitan housing authorities, created under Section 1078-29, et seq., General Code, are not subject to the payment of unemployment contributions imposed by Section 1345-4, General Code, and such housing authorities may not elect to become subject to the unemployment compensation laws of Ohio.

Respectfully,

THOMAS J. HERBERT,

Attorney General.