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VACATION PAY—PUBLIC AUDIT EXPENSE FUND—BUREAU
OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES.

SYLLABUS:

Vacation pay of certain employes in the Bureau of Inspection and Supervision of Public Offices discussed.

Columbus, Ohio, July 25, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your recent communication, which reads as follows:

“The Bureau of Inspection and Supervision of Public Offices employs a number of persons for the purpose of typing the copies of the reports of examinations of taxing districts, as prepared and filed by the various examiners.

The base pay of such employes is set at a fixed amount per month, but in order to know the actual cost of typing the report so that the cost may be charged against the taxing district, such compensation is paid on the basis of each page typed and proven, and each employe must produce a sufficient number of pages in order to entitle her to the fixed amount per month. In other words, each employe is paid on a ‘piece work’ basis, and the fixed amount acts as a limitation on the amount that may be drawn each month.

It has been the practice in the past that an employe must produce more than this monthly quota in order that such employe may have a vacation with pay, the amount of such overproduction being held and paid to such employe during the vacation period. Most of the employes are unable to produce enough work over the quota to enable them to have the customary vacation granted to other employes.

In view of the facts as above set forth, may we respectfully request your opinion on the following questions:

1. Are the employes in question entitled to a two weeks vacation with pay at public expense?

2. If the answer to question 1 is in the affirmative, would the Auditor of State be authorized to pay said vacations from the Public Audit Expense Fund of the Bureau of Inspection and Supervision of Public Offices?"

The provisions of law dealing with vacations for certain state employes are set out in section 154-20 of the General Code, and read as follows:

"* * * Each employe in the several departments shall be entitled during each calendar year to fourteen days leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended."

It will be noted that the above provisions have application to "each employe in the several departments." Section 154-20 is a part of the so-called "administrative code" enacted in 1921 (109 O. L. 105). In section 154-2, a part of the same act in which the above provisions were enacted, a "department" is defined as follows:

"'Department' means the several departments of state administration enumerated in section 154-3 of the General Code."

Reference to section 154-3, General Code, discloses that the office of the Auditor of State or the Bureau of Inspection and Supervision of Public Offices is not enumerated therein. Consequently, the above quoted provisions from Section 154-20 would have no application to employes of your Bureau. It should not be concluded therefrom, however, that the granting of vacations with pay to such employes is in violation of law. While such employes and others employed in branches of the state government not enumerated in Section 154-3 might not be entitled as of right to vacations with pay, certainly if the efficiency of the offices in which such persons are employed would in no manner be impaired by the granting of vacations with pay to such employes or a denial thereof would work peculiar hardship to such employes, I know of no provisions of law which would operate to render the granting of such vacations unlawful.

Furthermore, it has been the uniform practice of all state officers, departments and boards, long continued by successive officers, to grant to

their employes a two weeks' vacation with pay. Therefore, in my opinion, the granting of a two weeks' vacation with pay to the employes about whom you inquire would not be in violation of the law.

In answer to your second question, your attention is directed to Sections 287 and 288 of the General Code, which respectively read as follows:

Section 287:

"The necessary expenses of the maintenance and operation of the bureau of inspection and supervision and the total amount of compensation paid state examiners and assistant state examiners in excess of the amount borne by the taxing districts shall be borne by the several counties in proportion to their population at the preceding federal census; provided that the total amount of all such expenses shall not exceed in the aggregate the sum of one hundred and twenty thousand dollars per annum. The auditor of state shall draw on the treasurer of each county for its proportion of such expenses and the county treasurer shall pay such amount from the general revenue fund of the county semi-annually during the months of June and December. All moneys received by the auditor of state for the maintenance and operation of the bureau, shall be paid into the state treasury to the credit of the bureau of inspection and supervision fund, and all moneys received by the auditor of state for the compensation of state examiners and assistant state examiners shall be paid into the state treasury to the credit of the public audit expense fund."

Section 288:

"All expenses pertaining to the inspection and auditing of the public accounts and reports of a taxing district shall be borne by the district, subject to the following limitations; for the services of each state examiner, assigned to examine a township, school district or village, such district shall pay eight dollars per day; for the services of each assistant state examiner so assigned such district shall pay five dollars per day, all other taxing districts shall pay ten dollars per day for the services of each state examiner assigned to examine such district and shall pay six and one-quarter dollars per day for the services of each assistant state examiner so assigned. The auditor of state shall certify the amount of such expenses, including the charges for services herein provided for, to the auditor of the county in which the district is situated. The county auditor shall forthwith issue his warrant in favor of the auditor of state on the county treasurer, who shall pay it from the general fund of

the county, and the county auditor shall charge the amount so paid to the taxing district at the next semi-annual settlement. Moneys so received by the auditor of state shall be paid into the state treasury to the credit of the public audit expense fund."

It will be observed that the latter of the above sections provides that all expenses pertaining to the inspection and auditing of public accounts and reports of a taxing district shall, subject to certain limitations with respect to the per diem pay of state examiners and assistant state examiners, be borne by the district and that the moneys received by the auditor of State for such expenses shall be paid into the State Treasury to the credit of the Public Audit Expense Fund; and that the former provides that such portion of the moneys received thereunder by the Auditor of State from the several counties for compensation paid to state examiners and assistant state examiners in excess of the amount borne by the taxing districts, shall be paid into the State Treasury to the credit of the Public Audit Expense Fund.

Since the Public Audit Expense Fund consists of no moneys other than those paid to the Auditor of State in accordance with the above statutes and for the purposes therein set out, it would appear that unless it can be said that the vacation pay in question is (1) compensation paid to state examiners and assistant state examiners in excess of the amount borne by the taxing districts, or (2) an expense pertaining to the inspection and auditing of the public accounts and reports of a taxing district, such vacation pay could not lawfully be charged against such fund.

Obviously, it is not a part of the compensation paid to state examiners or assistant state examiners, and consequently payment thereof could not lawfully be made from that portion of the Public Audit Expense Fund derived from moneys received by the Auditor of State from the several counties under the provisions of Section 287. Since you state in your letter that the persons in question are employed at typing the reports of examinations made of taxing districts and are paid therefrom on a "piece work" basis, it is apparent that the wages paid such persons are a part of the expense which should be borne by the taxing districts under section 288. However, under the facts set out in your letter, any compensation paid to such employes covering a vacation period could hardly be regarded as a part of the expenses chargeable to any particular taxing district under the terms of said section. If such vacation pay could be so regarded,

the first question which confronts us is one concerning the allocation to the different taxing districts which have contributed to the wages of such persons during the year in which such vacation was earned. For instance, in the case of any one of such employes, is each taxing district to be assessed part of her vacation pay on the basis of the number of pages or fractions thereof, which such employe typed in making up the reports of such district? In other words, is part of such employe's vacation pay to be included in fixing the actual cost of typing the report of a particular district? Of course, if this is done, and I am in a measure inclined to the opinion that vacation pay if proportionately charged against the taxing districts on the above basis could lawfully be included in the actual cost of an examination, then it would appear that compensation paid to such employes for time spent on vacation could lawfully be paid from the Public Audit Expense Fund.

However, from your letter, it appears that the amount actually charged to any particular taxing district for the typing of reports in connection with the examination of such district is the "piece work" wage paid to the person who typed the report of such examination. Since such is the case, it is apparent that there are no moneys presently in the Public Audit Expense Fund to cover vacation pay, and you are accordingly advised that in my opinion compensation given to such employes for vacation periods can not lawfully be paid from the Public Audit Expense Fund.

Respectfully,

HUGH S. JENKINS

Attorney General