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1. EMPLOYE, STATE, PRESENTLY EMPLOYED — FORMERLY EMPLOYED BY WORLD WAR II COMPENSATION FUND, NOT ENTITLED TO PRIOR SERVICE CREDIT UNDER HOUSE BILL 484, 96 GENERAL ASSEMBLY FOR TIME EMPLOYED BY WORLD WAR II COMPENSATION FUND.
2. PRESENT STATE EMPLOYE FORMERLY EMPLOYED BY WORLD WAR II COMPENSATION FUND NOT ENTITLED TO CREDIT ACCUMULATED FOR SICK LEAVE WHILE EMPLOYED BY WORLD WAR II COMPENSATION FUND —SECTION 486-17c G. C.

SYLLABUS:

1. A present state employe who was formerly employed by the World War II Compensation Fund, is not entitled to prior service credit under House Bill 484, Ninety-Sixth General Assembly, for the time he was employed by the World War II Compensation Fund.
2. A present state employe who was formerly employed by the World War II Compensation Fund is not entitled to credit accumulated for sick leave under Section 486-17c, General Code, while employed by the World War II Compensation Fund.

Columbus, Ohio, August 16, 1949

Mr. Frank J. Collopy, Administrator
Bureau of Unemployment Compensation
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“The question has arisen as to whether Mr. K., whom we recently hired, is entitled to prior State Service under H. B. 484, for time he was employed from December 16, 1947 to April 4, 1949, by the World War II Compensation Fund.

“We wish to quote H. B. 484 enacted by the Ninety-Sixth General Assembly and continued by succeeding General Assemblies provided under ‘Salary and Wage Adjustment’ page 131, as follows:

(Quoted part omitted)

“Your opinion is requested on the above and also whether the sick leave Mr. K. accrued during his employment with the

World War II Compensation Fund can be transferred to the Bureau.”

While your question has never been the subject of an opinion of this office, it has been discussed numerous times with various departments of the state and with the Auditor's office. It has been the general agreement between these departments and this office that employees of the World War II Compensation Fund are not entitled to prior state service under H. B. 484 of the Ninety-Sixth General Assembly which provided for temporary increases in salary for state employees to be determined by the length of state service. The reason for this decision is the definition of “state employe” as contained in H. B. 484 under the heading SALARY AND WAGE ADJUSTMENT, viz:

“* * * The words ‘state employe’ shall mean and include all officers and employes of the State of Ohio now or hereafter on the state payroll not herein specifically excepted. * * *”

Employees of the World War II Compensation Fund are not on the payroll of the State of Ohio. They are paid from the proceeds of the sale of bonds. Thus, Article VIII, Section 2b of the Constitution of the State of Ohio creating the World War II Compensation Fund reads in part as follows:

“The board of commissioners created by section 8 of Article VIII of the Constitution of the State of Ohio, designated therein ‘The Commissioners of the Sinking Fund’, shall, forthwith upon the adoption of this amendment, proceed to issue and sell, from time to time, bonds of the state of Ohio in such amounts of face value as it may deem necessary to provide the funds, or such part thereof, as may be required *to pay the compensation and the expenses of administering this section as herein provided for, * * **”.

“The Commissioners of the Sinking Fund shall select and appoint such legal counsel and employees as *it may deem necessary, fix their compensation* and prescribe their duties, and all such appointees shall serve at its pleasure.” (Emphasis added.)

In sub-paragraph 2(c) of H. B. 484 it is stated:

“(c) The salary adjustment provided for in this act shall apply to all state employes, except: * * *

“(6) Members of the following Boards, Bureaus and Commissions and employes thereof, whose compensation is fixed by statute set opposite the names: * * *

“Commissioners of Sinking Fund and Clerk. Section 382.”

Employees of the World War II Compensation Fund are not covered on the civil service rolls of the state. Since they are not considered as civil service employees they would not be "in the service of the state" as defined by Section 486-1 of the General Code, and this would seem to be another reason for excluding them from the benefits of H. B. 484. Section 486-1 General Code, defines civil service as follows:

"The term 'civil service' includes all offices and positions of trust or employment *in the service of the state* and the counties, cities and city school districts thereof." (Emphasis added.)

For these reasons it is my opinion that Mr. K. is not entitled to prior state service under H. B. 484 of the Ninety-sixth General Assembly for the time he was employed by the World War II Compensation Fund.

The sick leave mentioned in your request, I assume, is sick leave permitted under Section 486-17c of the Ohio Civil Service Law. That section reads as follows:

"Each full-time employee, whose salary or wage is paid in whole or in part by the state of Ohio, shall be entitled for each completed month of service to sick leave of one and one fourth (1¼) work days with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness or death in the employee's immediate family. Unused sick leave shall be cumulative up to ninety (90) work days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit and the civil service commission. The previously accumulated sick leave of an employee who has been separated from the state service may be placed to his credit by the state civil service commission upon his re-employment in the state service. An employee who transfers from one state agency to another state agency shall be credited with the unused balance of his accumulated sick leave. Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employees herein. The responsible administrative officer of the employing unit shall require the employee to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes.

"Nothing in this act shall be construed to interfere with existing unused sick leave credit in any agency of state govern-

ment where attendance records have been maintained and credit has been given employees for unused sick leave.”

(Emphasis added.)

Since Mr. K. was not a civil service employee or a state employee he may not be credited with the sick leave he accumulated with the World War II Compensation Fund.

Respectfully,

HERBERT S. DUFFY,
Attorney General.