

Commission upon the question of further compensation and you inquire whether or not the awards should be made under Section 1465-74 of the General Code or whether the compensation should be made direct from the state insurance fund. It is quite clear that both Sections 1465-74 and 1465-75 provide that every effort should be made to collect the award and judgment against the employer before it is paid from the surplus of the state insurance fund. There is no authority to pay compensation to an employee of a non-insuring employer until after an award has been made against the employer as provided in Section 1465-74. The only exception to this provision is that provision of Section 1465-75 of the General Code which provides for payment of an award from the state insurance fund if the premium for the period in which the injury occurred can be collected. However, the section provides that when the award is to be paid from the surplus fund it is the award made against the employer that must be paid. If the Industrial Commission makes an award against an employer, the statute provides that if it is not paid within ten days it should be certified to the Attorney General for collection and he should attempt to collect the same and within two years certify to the Commission the result of his efforts to collect said award as provided by statute. If the award is uncollectible, the amount thereof may then be paid from the surplus fund.

Therefore, specifically answering your question, it is my opinion that the Industrial Commission has no authority to pay an award from the surplus fund of the state insurance fund, until after an award has been made against the employers provided in Section 1465-74 of the General Code and the Attorney General has made an effort to collect and has certified the same to the Industrial Commission as uncollectible. Such procedure cannot be dispensed with because a former award made against the same employer on account of the same injury was paid from said surplus fund, after the Attorney General had certified that such former award could not be collected from the employer.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2792.

EMPLOYMENT AGENCY—LICENSE REVOKED FOR TAKING ASSIGNMENT OF MORE THAN 50% OF PERSONAL EARNINGS OF APPLICANTS FOR POSITION.

SYLLABUS:

1. *Section 6346-12 of the General Code is a law of general application and is not limited to those things referred to in the sections of the General Code contained in Chapter 25a of such Code.*
2. *Any private employment agency, which has been guilty of entering into a contract prohibited by Section 6346-12 of the General Code, may be refused a license by the Department of Industrial Relations of the State of Ohio, on the grounds that said applicant for a license had violated the laws of Ohio.*
3. *Should the Department of Industrial Relations make an order embodying the provisions of Section 6346-12, and forbidding any duly licensed private employment agency from accepting an assignment of more than fifty per cent of the personal earnings of any applicant for a position, upon the violation of such order by such an agency, said department may revoke its license in the manner provided in Section 894, General Code.*

COLUMBUS, OHIO, October 29, 1928.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge the receipt of your request for my opinion as follows:

"I am submitting for your attention the attached communication from Mr. O. W. Brach, Chief of the Labor Statistics division of this department, relative to the interpretation of Section 6346-12, O. L., which makes it unlawful for any 'person, partnership, corporation or firm to accept from any person any assignment of personal earnings assigning more than 50% of the personal earnings of the assignor.'

Will you please let us have your opinion in this matter at as early a date as possible?"

The attached communication from your Chief of the Division of Labor Statistics reads as follows:

"The writer is concerned regarding the interpretation of Section 6346-12 of the Ohio law which makes it unlawful for any 'person, partnership, corporation or firm to accept from any person any assignment of personal earnings assigning more than 50% of the personal earnings of the assignor.'

It has come to our notice that a certain private agency has a printed contract which is presented to the applicant upon his making application for employment to be furnished by the agency. Part of this contract has the following provisions: 'For the assignment of *all* salaries or wages or commissions and claims for salary or wages or commissions due me or to become due to me from my employer to the agency.' I am therefore wondering if the 'private agencies' contract which is quoted herein, is unlawful in Ohio—referring of course, to Section 6346-12, or whether the aforementioned section only applies to Chapter 25-A of the General Code having to do with chattel loans and assignments of wages.

The contract, of course, made between the applicant and the agency, after being properly made, may be considered a private contract, and I am therefore further desiring to ascertain as to whether or not such section would be unconstitutional. This situation as at present existing has been called to my attention with the request that we receive an opinion as quickly as possible in order that we may govern ourselves accordingly. I would appreciate to have you submit this matter to the Attorney General's office immediately."

As I understand your communication, your questions are, whether or not Section 6346-12 of the General Code is constitutional, and if so what, if any, consideration may the Department of Industrial Relations give to the provisions of said section in administering the private employment agency law.

Section 6346-12 reads as follows:

"It shall be unlawful for any person, partnership, corporation, or firm to accept from any person any assignment of his personal earnings assigning more than 50 per cent of the personal earnings of the assignor. Any such assignment shall be void."

As to whether or not this section is constitutional, I deem a consideration of this question unnecessary. All laws are presumed to be constitutional unless and until declared unconstitutional by a court of competent jurisdiction in a proceeding pending therein. It has never been the policy of this department to question the constitutionality of a statute duly enacted by the Legislature, except in a most flagrant case, and it is my opinion that said section should be considered constitutional by all administrative officers, including those of your department, unless the same be declared unconstitutional by a competent tribunal.

In the communication attached to your inquiry, the question is presented as to whether said section is of general operation, or is only applicable to Chapter 25A relative to chattel loans and assignments of wages. Said section was enacted by the 85th General Assembly in House Bill No. 597 (110 v. 209). The act so passed contains no other sections or provisions save and except the section under consideration. The General Code sectional number was assigned to said act by the Attorney General under his authority to codify the acts passed by the General Assembly. Therefore, notwithstanding the fact that the section was codified in Chapter 25a, the section clearly is general in its application, and is not limited to those things mentioned in said chapter.

The section makes it unlawful for any person, partnership, corporation or firm to accept from any person an assignment of his personal earnings in excess of fifty per cent thereof and provides that any such assignment shall be void. Clearly, then, if a private employment agency enters into a contract with any of its applicants whereby such applicant agrees to assign more than fifty per cent of his personal earnings, whether such earnings be by way of salary, wages or commission, such contract is unlawful and void.

The laws relative to private employment agencies are found in Sections 886 to 897-4 of the General Code, and provide that no such agency shall engage in the business for hire without being licensed by the Industrial Commission of Ohio and paying a fee therefor. The authority vested in the Industrial Commission of Ohio by said act was transferred to the Department of Industrial Relations by the Legislature when it enacted the Administrative Code (109 v. 105), and the Department of Industrial Relations should be substituted for the Industrial Commission as found in the sections relating to private employment agencies.

Section 892 of the General Code provides that each such license "shall be effective for one year from the date thereof." It is therefore necessary for each employment agency, whether it be a person, firm or corporation, to obtain a license each year, paying the prescribed fee and depositing a bond as is required by law.

Section 893 of the General Code reads as follows:

"The Industrial Commission of Ohio may refuse to issue a license to an applicant, if, in its judgment, such applicant or its officials or members are not of good moral character or have violated the laws or orders of the Industrial Commission of Ohio relating to employment agencies, or have violated laws of Ohio or ordinances of any city or village thereof, which in the judgment of the Industrial Commission, renders such persons improper persons for such license. If the Industrial Commission refuses to grant a license the license fee and bond shall be returned to the applicant by the said Industrial Commission."

It will be noted that said section provides that the Department of Industrial Relations may refuse to issue a license to operate a private employment agency if in its judgment such applicant has "violated laws of Ohio."

If an applicant has entered into a contract forbidden by Section 6346-12 of the General Code, supra, it has violated the laws of Ohio, for the reason that said section provides that it shall be unlawful for any person, firm or corporation to enter into such contract, and the Commission may, therefore, properly refuse to grant a license to such applicant.

Your attention is further directed to Section 894 of the General Code, which provides:

"If the Industrial Commission of Ohio as herein provided, shall find a licensee, or representative, partner or employee of such licensee has been convicted in any court of the State of Ohio of violating any of the provisions of this act or orders of the Industrial Commission, or if such licensee, or representative, partner, or employee of such licensee has been guilty of violating any of the provisions of this act or orders of the commission or is found by the Industrial Commission to be not of good moral character, said Industrial Commission may revoke said license which shall thereupon become null and void and said Industrial Commission shall immediately notify such licensee of such revocation whereupon such licensee may within ten days after the issuance of such notice petition the Industrial Commission of Ohio for a hearing in the same manner as is provided for employers or other persons specified in Section 27 of the Industrial Commission act, approved March 18, 1913."

You will note that, while by the express terms of this section, the Department of Industrial Relations is limited to revoking the license of a licensee, in the manner therein provided, who "has been convicted" or "has been guilty of violating *any of the provisions of this act* (G. C. Secs. 886 to 896-16)" as distinguished from the general law of the state, it may also revoke a license if a "licensee, or representative, partner or employee of such licensee has been guilty of violating any * * * orders of the" department. Should your department, therefore, see fit to make an order embodying the provisions of Section 6346-12, supra, and forbidding the acceptance of an assignment of more than fifty per cent of the personal earnings of an applicant for a position, and should there be any violation of such an order by a duly licensed agency, your department would be empowered to revoke the license of such agency in the manner prescribed by Section 894 above quoted.

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. Section 6346-12 of the General Code is a law of general application and is not limited to those things referred to in the sections of the General Code contained in Chapter 25a of such Code.
2. Any private employment agency, which has been guilty of entering into a contract prohibited by Section 6346-12 of the General Code, may be refused a license by the Department of Industrial Relations of the State of Ohio, on the grounds that said applicant for a license had violated the laws of Ohio.
3. Should the Department of Industrial Relations make an order embodying the provisions of Section 6346-12, and forbidding any duly licensed private employment agency from accepting an assignment of more than fifty per cent of the personal earnings of any applicant for a position, upon the violation of such order by such an agency, said department may revoke its license in the manner provided in Section 894, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.