

3685

BENEFITS, UNEMPLOYMENT — WHERE OBTAINED FROM ANOTHER STATE THROUGH FALSE STATEMENTS CONTAINED IN WEEKLY REPORT FILED WITH BUREAU OF UNEMPLOYMENT COMPENSATION OF OHIO — RECIPIENT OF SUCH BENEFITS VIOLATES SECTION 13104 G.C. NOT SECTION 1345-26 G.C.

SYLLABUS:

The obtaining of unemployment benefits from another state by means of false statements contained in a weekly report filed with the Bureau of Unemployment Compensation of Ohio, by the person receiving such benefits, constitutes a violation of Section 13104 of the General Code, and is not a violation of Section 1345-26, General Code.

Columbus, Ohio, April 14, 1941.

Hon. H. C. Atkinson, Administrator,
Bureau of Unemployment Compensation,
Columbus, Ohio.

Dear Sir:

I am in receipt of your recent request for my opinion which reads as follows:

“We respectfully request your opinion as to the application of Section 1345-26, of the Ohio General Code, to the following set of facts:

This Bureau subscribes to what is known as ‘Interstate Benefit Payment Plan,’ the purpose of which is to initiate and further a method for the payment of unemployment compensation benefits to those unemployed individuals who, having earned uncharged wage credits or who having accumulated uncharged credit weeks under unemployment compensation laws of one or more states (the administrative agencies of which have subscribed to this plan), might be deprived of benefits because of their absence from the state in which their benefit credits have been accumulated. In this connection, we respectfully refer you to Section 1345-19 of the Ohio General Code, which provides that the Administrator may enter into certain arrangements with

appropriate agencies of other states relative to benefit payments.

We have a case in which the claimant residing in Ohio, filed an application for benefits at a local office of this Bureau in Ohio, basing his right to benefits on his having been employed in the State of Illinois by an employer subject to the unemployment compensation law of Illinois. This Bureau, as agent for the Division of Placement and Unemployment Compensation of Illinois, accepted his application and also accepted subsequent weekly certifications for total unemployment and transmitted such certifications to the Illinois Division. As a result of this individual's certifications to total unemployment, he was paid benefits by the Illinois Division for such weeks as were certified to this Bureau. After benefits had been paid for several weeks to this individual, evidence was received to the effect that he had been employed during the benefit weeks and had not reported earnings, thereby obtaining benefits to which he was not entitled.

QUESTION: May criminal action be instituted in this state against this individual for falsification of earnings?"

Section 1345-26, General Code, reads as follows:

"Any person who, by means of a false statement or representation or by impersonation or any other fraudulent device whatever, obtains or attempts to obtain, for himself or any other person, benefits to which such person is not entitled or benefits in larger amount than that to which he is entitled *under this act*, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than three months, or both." (Emphasis mine.)

The employe to whom you refer in your letter was securing benefits from the State of Illinois, he having qualified for benefits by working for an employer in said state. He later moved to Ohio, and through an interstate plan made his original request and weekly reports in Ohio at a local office of the Bureau of Unemployment Compensation. I am advised that this original claim and each weekly report were forwarded by your local office to your central office, and by it forwarded to the Division of Placement and Unemployment Compensation of Illinois. This Division passed upon the original claim, as well as upon each weekly report and from them determined that the employe was entitled to benefits and forwarded checks for the benefit amounts from its office in Illinois direct to the employe at his address in Ohio. This employe was receiving his benefits from the State of Illinois under the Illinois law and not under the Ohio law.

A reading of Section 1345-26, supra, clearly shows that it applies only to one who obtains or attempts to obtain benefits under the Ohio Unemployment Compensation Law, said section providing:

“Any person who, * * * obtains or attempts to obtain * * * benefits to which such person is not entitled * * * under this act, shall be guilty of a misdemeanor * * *.”

It is therefore my opinion that the employe referred to in your letter, can not be prosecuted under said action.

This employe has, however, received benefits from the State of Illinois by false pretense which he made in the State of Ohio, and has thereby violated Section 13104 of the General Code, which section reads in part as follows:

“Whoever, by false pretense and with intent to defraud, obtains anything of value * * if the value of the property or instrument so procured, * * is thirty-five dollars or more, shall be imprisoned in the penitentiary not less than one year nor more than three years, or, if less than that sum, shall be fined not less than ten dollars nor more than one hundred dollars or imprisoned not less than ten days nor more than sixty days, or both.”

Having violated the provisions of Section 13104, supra, the question arises as to where he may be tried. Section 13426-10, General Code, provides as follows:

“The crime of obtaining anything of value by false pretenses and with intent to defraud, and the crime of obtaining signature of another to a written instrument by like means and with like intent, may be alleged to have been committed, and may be prosecuted and punished, in any county where the false pretense was made, written or used, or in or through which any of the property or written instrument obtained was carried, sent, transported or received by or for the accused.”

In the case of Ohio vs. Ponticos, 126 O. S., 431, it is stated in the syllabus:

“Under Section 13426-10, General Code, (113 Ohio Laws, 131), a person charged with the offense of making a false financial statement within the provisions of Section 13105-1, General Code, may be prosecuted and punished in any county where the

false financial statement was made, written or used, or in or through which any of the property or written instrument obtained was carried, sent, transported or received by or for the accused.”

In that case the defendant made affidavit in Cincinnati, Ohio, as to his financial condition, and mailed the affidavit to a party in Chicago, Illinois, and received from such party two drafts. He was indicted in Hamilton County and at the close of the trial the court granted defendant's motion for a directed verdict on the ground that the venue had not been proven. The case was then taken to the Supreme Court on the exceptions of the prosecuting attorney by virtue of the provisions of Sections 13446-2, et seq., General Code. The Supreme Court held that Hamilton County, Ohio, was a proper venue for the trial by virtue of the above statute.

I am therefore of the opinion in specific answer to your question, that the employe in question, who is receiving benefits from the State of Illinois, can not be prosecuted under the provisions of Section 1345-26, General Code, but he may be prosecuted under the provisions of Section 13104, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.