

be violative of the provisions of Section 27 of Article II of the Constitution of Ohio forbidding the General Assembly to exercise the power of appointment of public officers.

On the other hand, if the committee in question is empowered not only to select a list of citizens from whom the Governor should select three members for appointment to membership on a liquor control commission, but as well, to select citizens from whom successors to original appointments on this commission are to be made and from which list appointments are to be made to fill vacancies it is my opinion that the members of the nominating committee are thereby constituted public officers and therefore their selection by the legislature as proposed would be violative of the constitutional provision prohibiting the legislature from making appointments of public officers.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1950.

EMPLOYMENT—NATIONAL RE-EMPLOYMENT SERVICE OPERATING UNDER PROVISIONS OF NATIONAL INDUSTRIAL RECOVERY ACT—COUNTY FUNDS MAY NOT BE PAID EMPLOYEES ENGAGED SOLELY TO FEDERAL AGENCIES—STATE-CITY GOVERNMENT SERVICE DISTINGUISHED.

SYLLABUS:

1. *The National Reemployment Service may be regarded as operating under the provisions of the National Industrial Recovery Act (H. R. 5755) enacted by the 73rd Congress.*

2. *A board of county commissioners has no authority to employ assistant county clerks for the sole purpose of assisting Federal agencies, such as the National Reemployment Service, and pay for such services out of county funds. However, under House Bill 705, the governor or any commission to which the governor may delegate any of his functions and powers under this Act may call upon any county employees for aid in carrying out his or its functions under this Act.*

3. *Opinion No. 862, dated May 28, 1933 is still applicable in its reasoning even though there are no county relief boards existing in the State.*

4. *The National Industrial Recovery Act, (H. R. 5755) and the Ohio Statute (H. B. 705) apply to the National Reemployment Service established in this state, as distinguished from the State-City Employment Service functioning under the State Law, (S. B. 402) and the Federal Act, (S. R. 510).*

COLUMBUS, OHIO, December 4, 1933.

State Relief Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“For the guidance of the State Relief Commission in its relations with the National Reemployment Service, established in Ohio by the U. S. Department of Labor, an opinion is requested upon the following questions:

(1) Is the National Reemployment Service to be regarded as operating under the provisions of the National Recovery Act (H. R. 5755) enacted by the 73rd Congress?

The purpose of this Act is declared to be: 'to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.'

Section 1 of this Act reads, in part, as follows: '* * * to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, * * * to *reduce and relieve unemployment*, to improve standards of labor, and otherwise to rehabilitate industry.'

Subsection 2(a) reads in part as follows: 'To effectuate the policy of this title, the President is hereby authorized to establish such agencies * * * to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, *with the consent of the state*, such State and *local officers and employees*, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers or employees so appointed.'

Subsection 2(b) provides that: 'The President may delegate any of his functions and powers under this title to such officers, agents and employees as he may designate or appoint * * *.'

With reference to the provision in subsection 2(a) that the President 'with the consent of the State' may utilize State and local officers and employees to carry out the provisions of the National Recovery Act, the Ohio General Assembly has enacted House Bill No. 705, which provides:

'Section 2 * * *

The consent of the state is hereby given to the utilization by the president of the United States of the services of such state and local officers and employees as the President may find necessary. The governor, * * * or any commission, to which the governor may delegate any of his functions and powers under this act, may call upon * * * any officers or employees of any county, municipal corporation, township or school district in this state for aid in carrying out his or its functions under this act.'

(2) May a board of county commissioners employ assistant county clerks, assign them to duties in connection with the carrying out of the purpose of the National Industrial Recovery Act as it applies to the National Reemployment service, established by the President in this state, and pay for such services out of county funds?

This practice is known to exist in several counties.

(3) In your Opinion No. 862 dated May 28, 1933, the following is used as a limiting phrase: 'When there is formed in the county a board known as the County Relief Board, which has as its purpose * * *.'

Is that opinion no longer applicable because of the fact that at the present time there are no County Relief Boards existing in the state?

(4) Do not the National Industrial Recovery Act (H. R. 5755) and the Ohio statute (H. B. 705) apply to the National Recovery Service established by the President in this state, as distinguished from the State-City Employment Service functioning under state laws and co-

operating with the U. S. Employment Service under Section 1 of S. R. 510, enacted by the 73rd Congress, and Ohio S. B. 402?

There are two separate and distinct employment services functioning in this state. One is the State-City Employment Service, directed by Mr. John B. Gilbert in the Department of Industrial Relations. This service is cooperating with the Federal employment service under the provisions of Ohio S. B. 402.

The other is the National Reemployment Service which is under the direction of Mr. Stanley B. Mathewson, a Federal employee, and is functioning as an emergency re-employment service in localities not served by the State-City Service."

Inasmuch as your fourth question concerns the set-up of the United States Employment Service and the so-called State-City Employment Service, for purposes of clarity I will first outline the statutory set-up for these bureaus.

The United States Employment Service was established and its duties defined by virtue of S. R. 510, enacted by the 73rd Congress. Section 1 of this Federal Act which is entitled "An Act to provide for the establishment of a national employment system for cooperation with the states in the promotion of such system and for other purposes", provides:

"(a) In order to promote the establishment and maintenance of a national system of public employment offices there is hereby created in the Department of Labor a bureau to be known as the United States Employment Service, at the head of which shall be a director. * * *

(b) Upon the expiration of three months after the enactment of this Act the employment service now existing in the Department of Labor shall be abolished; and all records, files, and property (including office equipment) of the existing employment service shall thereupon be transferred to the United States Employment Service; and all the officers and employees of such service shall thereupon be transferred to the United States Employment Service created by this Act without change in classification or compensation."

Section 3 (a) of the above Act provides:

"It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, to maintain a public employment service for the District of Columbia and, in the manner hereinafter provided, to assist in establishing and maintaining systems of public employment offices in the several states and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system of clearing labor between the several States."

Section 4 provides:

"In order to obtain the benefits of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all the powers necessary to cooperate with the United States Employment Service under this Act."

In order to obtain the benefits of this Federal Act above quoted, the 90th General Assembly of Ohio enacted Senate Bill 402 which provides in part:

"Sec. 154-45a. The State of Ohio does hereby, through its legislative authority, accept the provisions and benefits of the Act of Congress, entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes', approved June 6, 1933, and will observe and comply with all requirements of such Act.

Sec. 154-45b. The Department of Industrial Relations of Ohio is hereby designated as the State agency to cooperate with the United States Employment Service in the establishment and maintenance of a cooperative federal and state system of public employment offices within the state of Ohio, under the provisions of said Act of Congress, approved June 6, 1933, and the director of the Department of Industrial Relations is hereby empowered and directed to cooperate with the said United States Employment Service in the administration of said Act of Congress."

You will note that under Section 154-45b, above quoted, there has been established an employment service in this state which has been designated the "State-City Employment Service" in the Department of Industrial Relations which is directed to cooperate with the United States Employment Service established under the Federal Act, S. R. 510.

We come now to a consideration of the Federal Act H. R. 5755, the short title of which Act is "The National Industrial Recovery Act". Title 2 of this Act has to do with "Public Works and Construction Projects". This section of the Act provides for the expenditure of large sums of money on highways and other public works with the object of hastening business improvement by giving jobs to those who would otherwise be unemployed. Some of the pertinent provisions of this Act for the purpose of your inquiry are as follows:

"Sec. 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President

may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

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Sec. 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage."

I see no express provision in this National Recovery Act for the National Reemployment Service. However in the "Guide to the Organization and Operation of Reemployment Offices," published by the United States Department of Labor, I find the following, with reference to the National Reemployment Service of which you inquire:

"A. Purpose

The National Industrial Recovery Act, in title II, provides for the expenditure of large sums of money on highways and other public works with the object of hastening business improvement by giving jobs to those who would otherwise be unemployed.

B. General Organization

To aid in the fulfillment of this purpose, the United States Employment Service, within the Department of Labor, will organize and direct the National Reemployment Service. The Director of United States Employment Service, assisted by an executive staff, will be in charge of the Reemployment Service. *Where no established State or municipal free public employment service is functioning the National Reemployment Service will organize a service to the unemployed and the employer in filling jobs that become available as the contracts for public works are let.* The National Reemployment Organization will operate in geographical units, in most instances by counties. Each State Organization will be under the direction of a State reemployment director chosen by the Director of the United States Employment Service." (Italics the writer's.)

In Bulletin No. 2, "General Information and Instructions for State Advisory Boards and State Engineers (P. W. A.)", published September 12, 1933, by the Federal Emergency Administration of Public Works, I find the following:

"E. Employment of Labor

1. Employers may use organized or unorganized labor. Unorganized labor shall be obtained from local employment agencies designated by the United States Employment Service, while organized labor must be sought in the first instance from union locals. The use of unorganized labor is, however, subject to the provisions of section 7 (a) (1) and 7 (a) (2) of title I of the National Industrial Recovery Act.

See the detailed provisions of articles C (b) and C (c), page 3 of this Bulletin.

2. Engineers will keep in touch with the State Reemployment Director of the United States Employment Service who cooperates with the State Relief Director. The purpose of this contact is to keep informed of the status of the labor market in the State and to furnish information to public bodies and other applicants and to contractors relative to the availability of labor of various classes.

3. Immediately upon the advertisement of any project, the public body or private applicant will be required to furnish the State reemployment director with a copy of such advertisement together with information regarding the location of the project, the date of commencement and probable completion of the project, and an estimate of the number of each of the different classes of skilled and unskilled labor that will be required in the execution of the work. As soon as possible after receipt of such information, the State reemployment director will supply the applicant with the exact designation and address of the agency selected to prepare the employment lists for each project so that the name of the agency may be available to the applicant prior to the award of the contract. The applicant should be instructed by the State engineer to keep the State reemployment director advised as to the approximate time at which work will be started, so that the locally designated employment agency may have adequate opportunity to prepare employment lists and make them available to contractors on short notice. When the name of the employment agency for any project is known prior to advertisement, the applicant should be instructed to insert such name in the advertisement. Prospective bidders are entitled to this information at the earliest possible time."

You make reference to House Bill 705 passed by the 90th General Assembly of Ohio. This Act is to provide for the cooperation of the State of Ohio with the Federal Government in effectuating the policies of the National Industrial Recovery Act of the Congress of the United States and the Act of Congress entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power", approved May 12, 1933. Section 2 of House Bill 705 provides:

"To effectuate the policy of this Act the Governor is hereby authorized to delegate all or any part of the functions and powers hereby vested in him, to any department or departments, or commission or commissions, of the state government as established by law, and to accept

and utilize such voluntary and uncompensated services as he may find necessary, and to prescribe their authorities, duties and responsibilities. The consent of the state is hereby given to the utilization by the President of the United States of the services of such state and local officers and employees as the President may find necessary. *The director of any department to whom, or any commission to which, the governor may delegate any of his functions and powers under this Act, may call upon any reserve agency maintained by the state or by any educational institution supported in whole or in part by state funds, any educational institution supported in whole or in part by state funds, or upon any officers or employees of any county, municipal corporation, township or school district in this state for aid in carrying out his or its functions under this Act.*" (Italics the writer's.)

The above is a resume of the State and Federal Acts which are pertinent to the inquiries you have presented for my opinion. Your first inquiry is:

1. Is the National Reemployment Service to be regarded as operating under the provisions of the National Industrial Recovery Act, H. R. 5755, enacted by the 73rd Congress.

I am of the opinion that even though there is no express provision in the National Industrial Recovery Act concerning the establishment of a National Reemployment Service that such body is operating under the provisions of this Act. Title II of the National Industrial Recovery Act, part of which is quoted supra, provides for the expenditure of large sums of money on public projects and the National Reemployment Service was organized by the United States Employment Service, within the Department of Labor, to aid in the fulfillment of hastening business improvement by giving jobs to those who would otherwise be unemployed on these governmental public works projects.

I am answering your third question before answering your second question because I believe it is of an introductory nature to it. The syllabus of my opinion No. 862 rendered May 28, 1933, is as follows:

"When there is formed in a county a board known as a county relief board which has as its purpose the investigation and preparation of a list of unemployed persons within a county and the furnishing of such list to contractors on public, state or county projects, the board of county commissioners of such county has no authority to pay the expenses of such board and no authority to compensate the members and employes of such board from public funds, for their time and efforts in such service."

You inquire that inasmuch as there are no longer any so-called County Relief Boards existing in this state, whether or not this opinion is any longer applicable. An examination of the opinion will show you that the reasoning of this opinion is still applicable to your present inquiry. The opinion states:

"It would therefore appear that the county commissioners have no statutory obligation to perform the duties which are being performed by the "county relief board" referred to in your inquiry. (These duties referred to are the providing to contractors on public, state and county projects, names of unemployed). If that be true, it is difficult to per-

ceive a method by which they could employ an agent for compensation to do something which they had no authority to do, and pay him from public funds." (Parenthesis the writer's.)

Consequently the reasoning of this opinion is still applicable, even though, as you state, there are no longer county relief boards in existence in this state. To make my position clear, there is no statutory authority for county commissioners to employ either county relief boards for the purpose of furnishing contractors on public works names of unemployed persons, nor am I able to find any statutory authority for county commissioners to employ deputy assistant clerks to be paid from county funds for such purpose, even though the end sought to be accomplished is a laudable one.

Since the rendition of the above opinion, House Bill 705, enacted by the 90th General Assembly, has become effective, and I have already pointed out supra its pertinent provisions relative to your second inquiry. It would be a very strained construction of House Bill 705 to say that it authorizes county commissioners to employ new assistant county clerk to be paid out of county funds for the sole purpose of cooperating with Federal agencies set up under the National Industrial Recovery Act. It merely provides that "the governor, * * * or any commission, to which the governor may delegate any of his functions and powers of this Act may call upon * * * any officers or employees of any county, * * * for aid in carrying out his or its functions under this Act". Certainly the provision that county employees may be called upon to assist by the proper agencies is not statutory authority for "hiring" a county employee for such purpose. My conclusion with respect to your second inquiry is that county employees may be called upon by the governor or any commission to which the governor may delegate any of his functions for cooperation with the Federal agencies set up under the National Industrial Recovery Act, but that such county employees must be employed for county purposes. If a party is an employee of the county and hired for county purposes as provided for under other sections of the Code, under the provisions of House Bill 705 he may *then* be called upon for such cooperation with Federal agencies set up under the National Recovery Act.

Categorically answering your fourth inquiry, it is my opinion from a reading of the statutes quoted in the first part of this opinion and the Federal pamphlets quoted supra, that the National Industrial Recovery Act (H. R. 5755) and the Ohio Statute (H. B. 705) apply to the National Reemployment Service, as distinguished from the State-City Employment Service, functioning under the Ohio Act, (S. B. 402), quoted supra, and cooperating with the United States Employment Service established under Section 1 of the Federal Act (S. R. 510) quoted in the first part of this opinion.

Specifically answering your inquiries, it is my opinion that:

1. The National Reemployment Service may be regarded as operating under the provisions of the National Industrial Recovery Act (H. R. 5755) enacted by the 73rd Congress.

2. A board of county commissioners has no authority to employ assistant county clerks for the sole purpose of assisting Federal agencies such as the National Reemployment Service, and pay for such services out of county funds. However, under House Bill 705, the governor or any commission to which the governor may delegate any of his functions and powers under this Act may call upon any county employees for aid in carrying out his or its functions under this Act.

3. Opinion No. 862, dated May 28, 1933 is still applicable in its reasoning even though there are no county relief boards existing in the State.

4. The National Industrial Recovery Act, (H. R. 5755) and the Ohio Statute (H. B. 705) apply to the National Reemployment Service established in this state, as distinguished from the State-City Employment Service functioning under the State Law, (S. B. 402) and the Federal Act (S. R. 510).

Respectfully,

JOHN W. BRICKER,

Attorney General.

1951.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO—
\$50,000.00.

COLUMBUS, OHIO, December 4, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1952.

APPROVAL, LEASE TO RESERVOIR LAND IN FRANKLIN TOWNSHIP,
SUMMIT COUNTY, FOR THE RIGHT TO OCCUPY AND USE FOR
PUBLIC DOCKLANDING AND PRIVATE BOATHOUSE PURPOSES
—ASA FRANKS.

COLUMBUS, OHIO, December 5, 1933.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my examination and approval a certain reservoir land lease, in triplicate, executed by the Conservation Commissioner to one Asa Franks of South Akron, Ohio. By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of six dollars (\$6.00), payable in semi-annual installments of three dollars (\$3.00) each, there is leased and demised to the above named lessee the right to occupy and use for public docklanding and private boathouse purposes the water front and state land in the rear thereof, approximately twelve (12) feet in width, that lies at the end of the thirty-foot street known as "Second Street" of the Locust Grove Allotment in Section 12, Franklin Township, Summit County, Ohio.

Upon examination of this lease, I find that the same has been executed by the Conservation Commissioner and by Asa Franks, the lessee named therein. I also find upon examination of the provisions of this lease, and of the conditions and restrictions contained therein, that the same are in conformity with section 471 and other sections of the General Code relating to the execution of leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,

Attorney General.