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EMPLOYES IN STATE SERVICE—AMENDMENT OF SECTION 143.10 (I) RC—EFFECTED BY ENACTMENT OF AM. SUB. HB 484, 100 GA—PROVISION THAT BEGINNING JULY 1, FOLLOWING HIS EMPLOYMENT EACH EMPLOYEE WHO HAS COMPLETED AT LEAST NINETY DAYS OF SERVICE AND WHO IS BELOW MAXIMUM SALARY STEP IN PAY RANGE SHALL RECEIVE AN AUTOMATIC SALARY ADJUSTMENT EQUIVALENT TO NEXT HIGHER STEP WITHIN PAY RANGE FOR HIS CLASS OR GRADE—NOT RETROSPECTIVE IN APPLICATION—NO APPLICATION TO THOSE EMPLOYES WHO, ON JULY 1, 1953, OR ON ANY PRIOR JULY 1, HAD SUCH NINETY DAYS OF COMPLETED SERVICE BUT UNDER THE LAW IN EFFECT AT THE TIME WERE NOT ENTITLED TO SUCH SALARY ADJUSTMENT.

SYLLABUS:

The amendment of Section 143.10(1), Revised Code, effected by the enactment of Amended Substitute House Bill No. 484, effective October 23, 1953, 100th General Assembly, which provides that "Beginning July 1 following his employment, each employe who has completed at least ninety days of service in any position, office or employment and who is below the maximum salary step in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade" is not retrospective in application and, thus, has no application to those employes who on July 1, 1953, or on any prior July 1, had such ninety days of completed service, but who, under the law in effect at such time, were not entitled to such salary adjustment.

Columbus, Ohio, December 30, 1953

Hon. Carl W. Smith, Chairman, State Civil Service Commission of Ohio
Columbus, Ohio

Dear Sir:

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

"Subsequent to the effective date of Amended Substitute House Bill No. 484, a supplemental payroll from the auditor of state was submitted to this Commission for approval bearing the names of certain employes who had served more than ninety

days, but less than the major part of a year, preceding July 1, 1953, for payment of automatic salary adjustments equivalent to the next higher step within their respective pay ranges, for the period July 1, 1953, to the effective date of the aforementioned act.

“Section 143.11(C) says: ‘The new salaries of all employees affected by new classifications, additional grades within existing classifications, and the reassignment of classifications to different pay ranges, shall be effective as of July 1, 1953.’

“Your opinion is requested to determine whether these employees are entitled to such automatic salary adjustments under the provisions of Section 143.10(I) of the Revised Code; and if so, when these adjustments become effective.”

Amended Substitute House Bill No. 484 was enacted by the 100th General Assembly on July 14, 1953, approved by the Governor on July 24, 1953, filed in the office of the Secretary of State on July 24, 1953 and became effective October 23, 1953. It amended Sections 143.09, 143.10, 143.11 and 143.12 of the Revised Code relative to the classification and salaries of state employes.

Prior to such amendment Section 486-7b(9), General Code, Section 143.10(I), Revised Code, read in part as follows:

“* * * Beginning July 1, 1951, each employe who has completed one year, or a major part thereof, in a particular position, office or employment and who is below step 5 in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. Each year thereafter, until the highest step in the pay range is reached, each employe shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. The first such adjustment shall become effective as of July 1, following completion of the first year's service, or major part thereof, and as of July 1 of each year thereafter until the maximum salary or wage in the pay range is reached. * * *”

As amended, effective October 23, 1953, Section 143.10(I), Revised Code, Section 486-7b(9), General Code, now reads in part:

“* * * Beginning July 1 following his employment, each employee who has completed at least ninety days of service in any position, office or employment and who is below the maximum salary step in the pay range to which his position, office or employment is assigned, shall receive an automatic salary ad-

justment equivalent to the next higher step within the pay range for his class or grade. On July 1 of each year thereafter, until the highest step in the pay range is reached, each employee shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. * * *

It would appear that certain employes of the Auditor of State, on July 1, 1953, had not completed a major part of a year in their particular positions, offices or employments and, thus, under the existing terms of Section 486-7b(9), General Code, were not entitled to an automatic salary adjustment equivalent to the next higher step within the pay ranges for their classes or grades. The basic question presented by your request, therefore, is whether the amendment which authorizes such salary adjustment as to an employe who has completed at least ninety days of service in such position, office or employment "on July 1 following his employment," and which became effective October 23, 1953, authorizes such salary adjustment for employes who, on July 1, 1953, had completed such ninety days but had not completed a major part of a year.

The answer to your question lies in a determination of whether such legislation is prospective or retrospective in operation.

The general rule, universally followed by the courts, as to whether a statute may be applied retrospectively or only prospectively is well stated in 37 Ohio Jurisprudence, pages 819 to 822, as follows:

"Courts indulge in the presumption that the legislature intended statutes enacted by it to operate prospectively rather than retroactively. Indeed, the general rule is that they are to be so construed if susceptible of such interpretation or unless the law is retroactive in terms which clearly show such legislative intention as to permit, by no possibility, of any other construction. When the intention of the legislature is to give a statute a retroactive effect, such intention must not be left to inference or construction, but must be manifested by express and unequivocal expression. If it is doubtful whether it was intended that the act should operate retrospectively, the doubt should be resolved against such operation. A provision in a statute declaring it to be an emergency law and expressly stating the reasons for such action are not sufficient to make the statute applicable to pending proceedings. These rules are especially true where a construction rendering the statute retrospective would work injustice."

Is there anything in the language of Section 143.10(I), Revised Code, as amended, which shows a legislative intent to apply it retro-

spectively or retroactively and of such a character as to permit no possibility of any other construction? Clearly not. Note that the past tense is not employed in any of the verbs. The statute refers to an employe who "has" completed ninety days of service, not to one who "had" completed such service. Note, too, that it states that he "shall" receive such salary adjustment "beginning July 1 following his employment." While the "July 1" referred to must be at least ninety days following his employment, the use of the future tense in the verb "shall" clearly indicates the legislative intent that such "July 1" must also be subsequent to the effective date of the legislation. In any event, it certainly could not be said that this section contains any language which, by unequivocal expression, provides that it shall operate retrospectively or retroactively.

It might be pointed out that as a companion measure to Amended Substitute House Bill No. 484, House Bill No. 483 was introduced at the same time, on March 18, 1953. This bill would have amended Section 486-7b to substitute a requirement of ninety days service prior to July 1 for the old requirement of service for a major portion of a year. This bill was introduced as an emergency measure and had it been passed prior to July 1, 1953, it would have had the effect of providing for a salary adjustment for all employes of the state who, on July 1, 1953, had completed ninety days of service in any position, office or employment and who were below step 5 in their respective pay ranges. This bill, however, was not reported out of committee.

Parenthetically it might be pointed out that if such statute could be construed so as to give it retrospective effect, there is no language which would limit such retrospective effect to July 1, 1953. In other words, if the language "beginning July 1 following his employment" is construed to refer to a July 1st which is already past, it would, of necessity, refer to July 1st of 1952, July 1st of 1951, etc., as well as to July 1, 1953. If it were given such a construction, which in my opinion it can *not* be, those persons who were still below step 5 of their particular classifications and who, on July 1 following their employment, did not receive a salary adjustment, but who would have received such salary adjustment under the existing law, would also be entitled to such adjustment as of the July 1 first following their employment and to commensurate adjustments thereafter.

Reference is made in your letter to the last paragraph of Section 143.11(C), Revised Code. This entire subsection reads as follows:

“Where new classifications, or new grades within existing classifications have been added by section 143.09 of the Revised Code, and pay ranges for new classifications or new grades have been assigned under section 143.11 of the Revised Code, the commission shall reassign immediately the particular positions affected, without a public hearing. Such reassignments of such positions shall be made in such a manner as to prevent any reduction in salary to affected employes, and the new salaries, following such reassignments, shall be computed so as to give the same salary benefits by way of increments and cost-of-living adjustments the affected employes would have received if no such new classifications or additional grades within classifications had been made.

“The new salaries of all employes affected by new classifications, additional grades within existing classifications, and the reassignment of classifications to different pay ranges, shall be effective as of July 1, 1953.”

It will be noted that this subsection deals only with (1) new classifications, (2) additional grades within existing classifications, and (3) the reassignment of classifications to different pay ranges. By way of amendment to Section 143.09, Revised Code, the 100th General Assembly, in Amended Substitute House Bill No. 484, created certain new classifications and certain additional grades within previously existing classifications. These newly created classifications and grades were assigned to certain pay ranges by Section 143.11, Revised Code, as amended. The bill also reassigned certain classifications to different pay ranges, e.g., Chief, Division of Mental Hygiene, assigned by the 99th General Assembly to pay range No. 49, was reassigned to pay range No. 51 in Section 143.11, Revised Code, as amended. The last paragraph of Section 143.11 (C), Revised Code, provides that the new salaries of employes affected by the above enumerated changes “shall be effective as of July 1, 1953.” It has no application to new salaries of employes by virtue of the automatic salary adjustment provided for as of July 1 of each year, since such automatic salary adjustment is not predicated upon any new classifications, additional grades within existing classifications or the reassignment of classifications to different pay ranges. Instead, such automatic salary adjustment is but an advancement in steps within the same pay range and is not predicated on a reclassification, new classification or reassignment of a classification to a different pay range.

Such language, of course, is an example of where the Legislature, by unequivocal expression, has provided that a certain portion of the legislation shall have a retrospective effect. Such retrospective effect, however, is not accorded to *all* of the terms of Amended Substitute House Bill No. 484, but is specifically limited to the situations described in Section 143.11(C), Revised Code.

In specific answer to your question, it is my opinion that the amendment of Section 143.10(I), Revised Code, effected by the enactment of Amended Substitute House Bill No. 484, effective October 23, 1953, which provides that "Beginning July 1 following his employment, each employee who has completed at least ninety days of service in any position, office or employment and who is below the maximum salary step in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade" is not retrospective in application and, thus, has no application to those employees who, on July 1, 1953, or on any prior July 1, had such ninety days of completed service, but who, under the law in effect at such time, were not entitled to such salary adjustment.

Respectfully,

C. WILLIAM O'NEILL
Attorney General