

ties and costs of the forfeited land sale, and the balances to be retained by the county treasurers for the proper owners of the forfeited lands.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

900.

INDUSTRIAL COMMISSION OF OHIO—STATE INSURANCE FUND—ADMINISTRATOR OF BUREAU OF UNEMPLOYMENT COMPENSATION OBLIGED TO PAY FROM UNEMPLOYMENT COMPENSATION ADMINISTRATIVE FUND TO INDUSTRIAL COMMISSION PREMIUMS COVERING EMPLOYEES OF SAID BUREAU—SECTIONS 1465-60, 1465-64, 1345-2 AND 1345-3, GENERAL CODE—PERIOD, 1939-1940 BIENNIUM—HOUSE BILL 674, GENERAL APPROPRIATION ACT, 93RD GENERAL ASSEMBLY.

SYLLABUS:

Under the law of Ohio, including Sections 1465-60, 1465-64, 1345-2 and 1345-3, giving proper consideration to the General Appropriation Act of the 93rd General Assembly, the administrator of the Bureau of Unemployment Compensation is obligated to pay from the Unemployment Compensation Administrative Fund, to the Industrial Commission, premiums covering employes of such Bureau.

COLUMBUS, OHIO, July 19, 1939.

HONORABLE HERSCHEL C. ATKINSON, *Administrator, Bureau of Unemployment Compensation, 427 Cleveland Avenue, Columbus, Ohio.*

DEAR SIR: I have your recent request for my opinion, which reads as follows:

“The Industrial Commission of Ohio has made a demand on this Bureau for payment of premium into the State Insurance Fund on our employees.

Section 1465-64 provides the manner in which contributions for Workmen’s Compensation on behalf of State employees are to be paid.

The Industrial Commission contends that the coverage of our employees is a necessary part of our administration as provided by Ohio General Code Section 1345-3 and, therefore, the premiums into the State Insurance Fund should come not as provided by Section 1465-64, but out of our administrative fund.

A careful reading of Ohio General Code, Section 1345-3, shows that all moneys in this (our administrative) fund shall be expended solely for the purposes of defraying the cost of administration of this (our) act and for no other purpose whatsoever.

In view of the provisions of Ohio General Code, Section 1465-64, is the Administrator of the Bureau required to pay the premium requested by the Industrial Commission of Ohio out of its administrative fund?

Your opinion on the legal implications involved will be appreciated."

Properly to resolve the question asked by you requires not only a consideration of Sections 1465-64 and 1345-3 of the General Code, but of Sections 1465-60 and 1345-2, General Code, as well. In so far as here pertinent, these several sections provide in part as follows:

Section 1465-60:

"The following shall constitute employers subject to the provisions of this act (Workmen's Compensation Act):

1. The state and each county, city, township, incorporated village and school district therein.

* * *

Section 1465-64:

"It shall be the duty of the industrial commission of Ohio to communicate to the General Assembly on the first day of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the state during the two years next ensuing to the public insurance fund.

In the month of July of each year the industrial commission shall certify to the auditor of state the amount of money necessary to be contributed by the state for the ensuing year and the auditor of state shall thereupon draw his warrant on the treasurer of state, in favor of said treasurer, as custodian of the state insurance fund, for said amount.

In case the General Assembly does not appropriate the amount called for by the estimate made by the industrial commission, and the amount appropriated by the General Assembly has been applied by the industrial commission for losses incurred through services to the state, no further disbursements for compensation or other benefits for losses sustained in subsequent services to the state shall be made available as provided by law."

Section 1345-2:

“There is hereby created an unemployment compensation fund (hereinafter called the unemployment fund), to be administered by the state of Ohio, without liability on the part of the state beyond the amounts paid into the fund and earned by the fund. This unemployment fund shall consist of all contributions collected under this act, together with any interest thereon collected pursuant to this act, all fines and penalties collected pursuant to provisions of this act, all interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, and all earnings of such property or securities. The unemployment fund shall be used to pay benefits and refunds as provided by this act and for no other purpose.

* * *

Section 1345-3:

“(a) There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the *bureau of unemployment compensation*. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this act, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, including the social security board, the *railroad retirement board* and the United States employment service, or from any other source, for such purpose, *except that moneys received from the railroad retirement board as compensation for services or facilities supplied to said board shall be paid into this fund or the special ‘employment service account’ thereof, on the same basis as expenditures are made for such services or facilities from such fund and account.* All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the *bureau of unemployment compensation* for expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund. The premiums for such bond and the

premiums for the bond given by the treasurer of the unemployment compensation fund under section 2 of this act, shall be paid from the moneys in the unemployment compensation administration fund.

(b) A special 'employment service account' shall be maintained as a part of the unemployment compensation administration fund for the purpose of maintaining the public employment offices established pursuant to section 15 of this act and for the purpose of cooperating with the United States employment service."

(Italics ours.)

Sections 1345-2 and 1345-3, General Code, were each amended by the 93rd General Assembly (H. B. No. 371; Eff. Aug. 3, 1939), the changes being indicated by the words above in italics. In so far as your question is concerned, however, these amendments are not material.

By the plain wording of Section 1465-60, *supra*, the state is constituted an employer subject to the provisions of the Workmen's Compensation Law. And while Section 1465-64, above quoted in part, makes provision for the appropriation and payment of "the amount of money necessary to be contributed by the state", it further provides that if the Legislature does not appropriate the amount fixed by the Industrial Commission, and the amount so appropriated by the commission for losses incurred through service to the state, "no further disbursements for compensation or other benefits for losses sustained in subsequent services to the state shall be made until state funds for that purpose have been made available as provided by law." This latter provision is a clear legislative recognition of that fundamental principle that one law making body may not bind a succeeding law making body, and the provisions of Section 22, Article II, Constitution of Ohio, to the effect that:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

In legal effect, it is no more and no less than a declaration of legislative policy. That is to say, if the Industrial Commission should, in any given biennium, include in its estimate communicated to the General Assembly, as directed by Section 1465-64, General Code, moneys to cover the employes of your commission, and the General Assembly should make an appropriation in accordance with this estimate, it is manifest that we would have a legislative declaration of an intention to pay the coverage of your employes from the general fund of the state. On the other hand, in the absence of the inclusion of such coverage in the estimate of the Industrial Commission and an appropriation by the Legislature, it must

be presumed that it was intended that moneys for this coverage were otherwise provided for. It has long been the settled policy of this state, deducible from the acts of the Legislature, from the opinions of the courts, from the acts of the State's administrative officers, and otherwise, that all state employes should be eligible to receive the benefits and compensation provided for by the Workmen's Compensation Law.

With your letter you transmit a copy of a letter signed by what is termed the "Legal Supervisor" of the Industrial Commission. The third and fourth paragraphs of this letter read:

"Under the provisions of the foregoing section (Section 1465-64, G. C.) the General Assembly has adopted the policy of appropriating money for payment of premium to the State Insurance Fund out of the particular fund or funds from which employes of the various state departments receive their salaries. Practically all state departments except the Highway Department receive their salaries from the General Revenue Fund. However, the Highway Department has special funds from which it pays its administrative cost including salaries and the Legislature has therefore appropriated out of these special funds to the credit of the Highway Department, a sufficient amount of money to cover the premium on employes of the Highway Department and appropriates out of the General Revenue Fund sufficient amount of money to cover premium on other state employes who receive their salaries directly from the General Revenue Fund.

Inasmuch as your department has an administrative fund in the State Treasurer's office by virtue of Section 1345-3 of the General Code of Ohio, which is in effect a continuing appropriation to your department of funds received from various sources including the Social Security Board and the United States Employment Service, it is logical to assume that the Legislature in making this continual appropriation to your department intended that a sufficient amount of money for payment of premium into the State Insurance Fund on employes of your department should come out of this special administrative fund as this has been the policy of the Legislature referred to in a previous paragraph and consequently the Industrial Commission of Ohio called upon your department to contribute from your administrative fund a sufficient amount of money to cover the cost of premium applicable to employes in your department."

The General Appropriation Act for the biennium beginning January, 1939, House Bill No. 674, 93rd General Assembly, contains the following appropriation at page 144:

“WORKMEN’S COMPENSATION FOR STATE EMPLOYEES
MAINTENANCE—

H Fixed Charges and Con-
tributions—

H 7. Insurance	\$75,000	\$75,000	
State Employes from General Revenue Fund			
Total Maintenance..	<u>\$75,000</u>	<u>75,000</u>	\$150,000”

Upon inquiry I am informed that the estimate submitted to the General Assembly by the Industrial Commission for this biennium, in accordance with the provisions of Section 1465-64, *supra*, was for a lump sum and that coverage for the employes in the Bureau of Unemployment Compensation was not included, the Industrial Commission having separately billed this Bureau for payment from the Bureau’s administrative fund.

While, of course, the Bureau of Unemployment Compensation, and the Commission which it succeeded, has not been in existence for any length of time, the administrative practice of the Industrial Commission and the recognition of this practice by the General Assembly in case of coverage for employes of the Highway Department, as distinguished from coverage for employes whose salaries and administrative cost are paid out of the general fund, is entitled to great weight in determining from which fund coverage for the employes of the Bureau of Unemployment Compensation should be paid.

As stated in the case of *State ex rel v. Brown, Secretary of State*, 121 O. S., 73 (1929), at page 75:

“It has been held in this state that ‘administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.’ *Industrial Commission v. Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745 (L. R. A. 1916B, 1277). See, also, 36 Cyc. 1140, and 25 *Ruling Case Law*, 1043, and cases cited.

This is a well-recognized principle of statutory construction, and we deem it applicable in the present instance.” * * *

Moreover, since the Industrial Commission submitted its estimate in accordance with the mandate of the Legislature, contained in Section 1465-64, *supra*, it is to be presumed that in making the appropriation above set forth, the Legislature knew what the estimate in question covered and made its appropriation with knowledge that it was contemplated

by the Industrial Commission that the premium to be paid into the State Insurance Fund, covering the employes of the Bureau of Unemployment Compensation, would be paid from the administrative fund of such Bureau. For these reasons alone, I am inclined to the view that the 93rd General Assembly intended coverage for your employes to be paid into the State Insurance Fund from the administrative fund of the Bureau of Unemployment Compensation.

But it is unnecessary to rest this conclusion solely on the grounds above set forth. You will observe that it is specifically and expressly provided in Section 1345-2, supra, that the unemployment compensation fund, designated by the Legislature as the "unemployment fund" is created "to be administered by the state of Ohio *without liability on the part of the state beyond the amounts paid into the fund and earned by the fund.*" This would seem to be a plain declaration of legislative intention that there should be no payments in connection with the administration of your Bureau from any funds appropriated by the Legislature, excepting only moneys specifically appropriated to your Bureau.

At page 150 of the General Appropriation Bill you will note that the 93rd General Assembly made the following appropriation, which appropriation is detailed commencing on the preceding page:

"Total Unemployment Compensation Commission
 —Division of Ohio State Employment Service
 ice\$318,180.00"

It is also provided in this General Appropriation Act that in addition to the items therein appropriated from the general revenue fund, "all moneys received from the United States government for employment service under the Federal Wagner Peyser and Social Security Acts are hereby appropriated to the State Division of Ohio State Employment Service for the purpose provided by law. The language "for the purposes provided by law" undoubtedly includes expenditures authorized in Section 1345-3, General Code, providing for the Unemployment Compensation Administrative Fund and the use of such fund.

Both in public and private accounting practice in this state, the necessary premiums required to be paid into the Workmen's Compensation Fund are considered a proper administrative charge. This is obviously so because persons coming within the definition of employers subject to the provisions of the Workmen's Compensation Act are required to contribute. That is to say, expenditures incurred in complying with the Workmen's Compensation Law are a necessary incident to transacting either public or private business in Ohio.

For all of which reasons, I am constrained to hold, and in specific answer to your inquiry you are advised, that:

Under the law of Ohio, including Sections 1465-60, 1465-64, 1345-2

and 1345-3, giving proper consideration to the General Appropriation Act of the 93rd General Assembly, the administrator of the Bureau of Unemployment Compensation is obligated to pay from the Unemployment Compensation Administrative Fund, to the Industrial Commission, premiums covering employes of such Bureau.

It is probably unnecessary to point out that this opinion relates only to the premium due for the 1939-1940 biennium and that future General Assemblies may make other and different provisions for the payment of the premium involved.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

901.

CONTRACT—STATE WITH THE NEW YORK CENTRAL RAILROAD COMPANY, ELIMINATION OF GRADE CROSSING, STATE HIGHWAY NO. 128, HARDIN COUNTY, OHIO, ABOUT ONE MILE WEST OF KENTON.

COLUMBUS, OHIO, July 19, 1939.

HON. ROBERT S. BEIGHTLER, *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration a proposed agreement by and between yourself as Director of Highways and The New York Central Railroad Company covering the elimination of the grade crossing over the track of the New York Central Railroad Company located at a point on State Highway No. 128 in Hardin County, Ohio, about one mile west of Kenton.

After examination it is my opinion that said proposed agreement is in proper legal form and when properly executed by you, will constitute a binding contract.

Said instrument is being returned herewith.

Respectfully,

THOMAS J. HERBERT,
Attorney General.