

3764

PRISON LABOR — RELIEF AREAS ARE POLITICAL SUBDIVISIONS OF THE STATE — PRODUCTION OF ARTIFICIAL LIMBS, PROPER SUBJECT FOR INDUSTRIAL TRAINING AND INSTRUCTION TO DEVELOP SKILLED ARTISANS — NOT UNLAWFUL FOR PRISONERS, OHIO PENITENTIARY, TO ENGAGE IN MANUFACTURING SUCH LIMBS TO BE SOLD OR DISPOSED OF TO LOCAL RELIEF AREAS FOR FREE DISTRIBUTION TO RELIEF WARDS.

SYLLABUS:

Relief areas are political divisions of the state within the meaning of the sections of the General Code relating to prison labor, and since the production of artificial limbs forms a proper subject for industrial training and instruction to the end that prisoners may become skilled artisans in such work, it is not unlawful for prisoners in the Ohio penitentiary to be employed and used for the purpose of manufacturing such limbs to be sold or disposed of to local relief areas for free distribution to those relief wards requiring such aid.

Columbus, Ohio, May 10, 1941.

Honorable Charles L. Sherwood, Director, Department of Public Welfare,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads:

"We have been asked whether it would not be possible for us to manufacture artificial legs at the Penitentiary for the use of persons on relief. At the present time there is one man in the Penitentiary who is skilled in this work. He has been assigned some helpers who are making legs for use of men in the Penitentiary.

The cost of artificial limbs from the manufacturer is very high and for this reason relief administrators are loath to provide funds for their purchase, but would be willing to pay a nominal sum which would take care of the material and a small work wage if they could be made in the Penitentiary. This would have the effect of granting more work to prisoners and helping to rehabilitate cases on the outside who could not be helped otherwise.

Please advise us if artificial legs could be manufactured and sold to relief areas."

There has in this state long been a strong feeling against permitting the sale in the open market of goods produced by convict labor. As early as 1894 a stringent act regulating "the sale of convict-made goods, wares and merchandise manufactured by convicts in other states" was enacted (91 v. 346), although not long thereafter, in the case of *Arnold v. Yanders*, 56 O.S. 417, 47 N.E. 50, 60 Am. St. Rep. 753 (1897), this act was held unconstitutional by the Supreme Court of Ohio as being violative of the commerce clause of the Federal Constitution.

In the amendments to the Constitution of Ohio of 1912, Section 41, Article II, was adopted, this section reading:

"Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or

profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political subdivision thereof or to any public institution owned, managed or controlled by the state or any political subdivision thereof, shall not be sold within this state unless the same are conspicuously marked 'prison made.' Nothing herein contained shall be construed to prevent the passage of laws providing that convicts work for, and that the products of their labor may be disposed of to, the state or any political subdivision thereof, or for or to any public institution owned or managed and controlled by the state or any political subdivision thereof."

The avowed policy of this state was commented upon by Mr. Justice Sutherland in the case of *Whitefield v. State of Ohio*, 297 U.S. 431, 80 L.Ed. 778 (1935), in which it was held that Sections 2228-1 and 2228-2, General Code, prohibiting the sale of convict-made goods on the open market and providing a penalty for violation of such prohibition, did not contravene the constitution of the United States. At pages 782 and 784 (L.Ed.) it was said:

"The policy of the state of Ohio for many years, as evidenced by its constitution and laws, has been to protect the products of free labor against competition from similar products brought into existence by prison labor. * * *

The view of the State of Ohio that the sale of convict-made goods in competition with the products of free labor is an evil, finds ample support in fact and in the similar legislation of a preponderant number of the other states. Acts of Congress relating to the subject also recognize the evil. * * *

All such legislation, state and federal, proceeds upon the view that free labor, properly compensated, cannot compete successfully with the enforced and unpaid or underpaid convict labor of the prison. A state basing its legislation upon that conception has the right and power, as far as the federal Constitution is concerned, by non-discriminating legislation, to preserve its policy from impairment or defeat, by any means appropriate to the end and not inconsistent with that instrument. * * *"

As demonstrative of the policy of the Legislature of this state, your attention is invited to the following sections of the General Code, most of which will be either merely referred to or quoted in substance in this opinion, viz., Sections 1205, 1845, 1846, 2206, 2207, 2227-2 to 2230-1,

incl., 2244, 6213 to 6218, incl., 7497 to 7499, incl., 7501 to 7514, incl., 13929 and 13932.

In so far as the question asked by you is concerned, Section 154-57, General Code, provides that the "department of public welfare shall have all powers and perform all duties vested in or imposed upon" what were formerly known as "the Ohio board of administration and the fiscal supervisor thereof."

Section 1205, *supra*, in substance provides for the use of prisoners confined in the Ohio penitentiary or the Ohio state reformatory, "to work on the state highway system," or "in the preparation of road building materials of any kind for use upon the state highway system." A prior analogous section was former Section 7496, General Code, repealed in the same act in which Section 1205 was enacted (112 v. 474, 501). Section 7497, General Code, provides that the "state highway commissioner (director) may lawfully expend any moneys available for the construction, repair and maintenance of roads to meet the cost of transportation, maintenance and discipline," and to provide for the compensation, of prisoners working on state highways, or in the manufacture of road building materials therefor, while Section 7498, *supra*, contains provisions authorizing county commissioners to "make requisition in like manner as the state highway commissioner (director) for the number of prisoners desired for use upon the county highways within said county or in the manufacture and preparation of road building material of any kind." Section 1845, *supra*, authorizes the board of administration (department of public welfare) to "assign among the correctional and penal institutions the industries to be carried on therein," while Section 1846, General Code, provides, *inter alia*, that the board of administration (department of public welfare), "subject to the approval of the secretary of state and auditor of state, shall fix the prices at which * * * all articles manufactured in such institutions shall be furnished *to the state or the political divisions and public institutions* thereof. Section 2206, General Code, requires that work, "labor or service shall not be performed by a convict within the penitentiary unless it be expressly authorized by the board of managers" (department of public welfare). Section 2230-1, *supra*, authorizes the use of prison labor "for the purpose of production of electric current" *for public institutions* owned, managed and controlled *by the state or a political division thereof*. And Sections 6213 to 6217,

inclusive, of the General Code, contain provisions for the branding, labeling or marking of goods and merchandise made by convict labor in penal institutions in this or other states, Section 6218, General Code, being a penal section fixing penalties for violations of said sections.

Sections 2228, 2229, 2230, 7502 and 13929, General Code, are of such pertinency to your question as to make advisable their exact quotation. These sections respectively provide:

Section 2228:

“The board of managers of the Ohio penitentiary, the board of managers of the Ohio State reformatory, or other authority, shall make no contract by which the labor or time of a prisoner in the penitentiary or reformatory, or the product or profit of his work, shall be let, farmed out, given or sold to any person, firm, association or corporation. *Convicts in such institution may work for, and the products of their labor may be disposed of, to the state or a political division thereof, or for or to a public institution owned or managed and under the control of the state or a political division thereof,* for the purposes and according to the provisions of this chapter.”

Section 2229:

“The board of managers of the penitentiary and the board of managers of the reformatory, so far as practicable, shall cause all prisoners serving sentences in such institutions, physically capable, to be employed at hard labor for not to exceed nine hours of each day other than Sundays and public holidays.”

Section 2230:

“Such labor shall be *for the purpose of the manufacture and production of supplies for such institutions, the state or political divisions thereof;* for a public institution owned, managed and controlled by the state or a political division thereof; for the preparation and manufacture of building material for the construction or repair of a state institution, or in the work of such construction or repair; *for the purpose of industrial training and instruction, or partly for one and partly for the other of such purposes;* in the manufacture and production of crushed stone, brick, tile, and culvert pipe, suitable for draining wagon roads of the state, or in the preparation of road building and ballasting material.”

Section 7502:

“All persons convicted of crime and sentenced to be con-

fined in the state reformatory, penitentiary, jail, workhouse or other penal institutions, shall be subject to labor upon the highways and streets as hereinbefore provided."

Section 13929:

The board of managers shall equip the factory buildings of the penitentiary as they are vacated by the contractors of prison labor, for the purpose of manufacturing articles *for the use of the state, or of its institutions, or of the political divisions of the state and their institutions*, and shall remodel, alter, or rebuild the factory buildings as may be required for the economical manufacture of said article." (Emphasis mine.)

From the constitutional provision, the statutes and the cases above set forth and discussed, these conclusions are irresistible:

I. A prisoner in the Ohio penitentiary or other penal institutions of the state may not "work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away."

II. It is the duty of the department of public welfare, in so far as practicable, to cause all physically capable prisoners, serving sentences in the Ohio penitentiary or one of the other penal institutions of the state, to be employed at hard labor for not to exceed nine hours of each day other than Sundays and public holidays.

III. The products of the labor of prisoners in the Ohio penitentiary or other penal institution of the state, may be disposed of to the state or a political division thereof, or for or to a public institution owned or managed or under the control of the state or a political division thereof; and

IV. Such prisoners may be employed for the purpose of manufacturing and producing such supplies or for the purpose of industrial training and instruction, or partly for one and partly for the other of such purposes.

In Section 3391, General Code, "Poor relief" is defined as meaning "food, clothing, shelter and *other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense*, to persons in their homes, or, in the case of

homeless persons, in lodging houses or other suitable quarters," the same section further providing that "'State director' means the state director of public welfare."; that "'Local relief authority' means the board or officer required by law or charter to administer or carry on poor relief in a local relief area"; and that "'Local relief area' means the taxing district within and for which poor relief funds are expended." By Section 3391-1, General Code, county and city local relief areas are created. Section 3391-3, General Code, prescribes the duties of the director of public welfare under the poor relief law. By Section 3391-4, General Code, a "poor relief board of appeals consisting of the auditor of state, the treasurer of state and the superintendent of the budget" is created. Section 3391-5, General Code, requires the auditor of state "to make continuous pre-audits of the poor relief expenditures of each local relief area, and file with the state director and each local relief authority affected thereby a certified copy" thereof. And Section 3391-11, General Code, provides for contributions for poor relief by the state from "appropriations to the department of public welfare." From an examination of the sections of the General Code, above briefly referred to, as well as the cognate sections thereto and the pertinent appropriation acts, it seems manifest that a "poor relief area" is a political division of the state, at least in so far as the problem here being considered is concerned.

In Opinion No. 3530, rendered under date of March 5, 1941, it was held in the first branch of the syllabus as follows:

"A local relief area, as the same is constituted under the provisions of Section 3391-1, General Code, is an agency of government that exists solely for the purpose of establishing and conducting a uniform, coordinated and efficient system of administering poor relief, and is not an entity or unit of local government against which a legal or moral obligation is capable of being created."

In the body of the opinion it was said:

"A study of the statutes quoted above reveals that the state director is the executive and administrative head in the administration of poor relief in this state and that the legislature has seen fit to bestow upon him very broad powers and authority in that regard.

A reading of the above statute, impels the conclusion that the legislature created the local relief area, not as a unit of local

government having corporate and quasi corporate powers, but as a unit of administration for the sole purpose of establishing and conducting a uniform, coordinated and efficient system of poor relief."

For the reasons above given, it seems manifest that a relief area comes within the term "political division" as used in the Sections of the General Code above referred to and quoted, including Sections 2228 and 2229, supra. And in this connection it should be noted that persons on relief are public wards or charges just as are the inmates of the various county homes, the essential differences being in the amount and character of the relief afforded and the fact that those on relief remain in their own habitations. Moreover, I am of the opinion that since the making of artificial limbs is a work requiring the services of skilled artisans, prisoners may be engaged in such work "for the purpose of industrial training and instruction" as well as for the purpose of producing supplies for sale to the state or a political division thereof.

The conclusions herein reached are in accord with a number of opinions of my predecessors in office.

In Opinion No. 672, Opinions, Attorney General, 1916, Vol. I, p. 972, the then Attorney General held as stated in the first two branches of the syllabus:

"There is ample provision of law to authorize the manufacture of automobile license plates by convict labor in the penitentiary and reformatory.

Section 41 of article II of the constitution, adopted September 3, 1912, has for its primary purpose the elimination of private profit from the labor of convicts in the penal institutions of the state."

Opinion No. 167, Opinions, Attorney General, 1917, Vol. I, p. 440, holds that it is not lawful "to use convict labor to manufacture brick for sale in the open market." Likewise in Opinion No. 1170, Opinions, Attorney General, 1918, Vol. I, p. 608, it was held that there was "no authority in law to manufacture lime with prison labor and sell the same to the city of Columbus," this holding being grounded upon the fact that in the sections of the General Code considered in that opinion (many of which are referred to herein), the Legislature did not intend to include municipalities within the term "political divisions" as used in such sec-

tions. In Opinion No. 826, Opinions, Attorney General, 1927, Vol. II, p. 1455, it was reiterated that the labor or time of a prisoner in the Ohio state reformatory may not be farmed out to any person whomsoever, and that it was "immaterial whether the consideration therefor be money or farm produce." And lastly, in Opinion No. 776, Opinions, Attorney General, 1937, it was held the printing on envelopes used to contain motor vehicle licenses might not be done at either the penitentiary or reformatory, because of the express provisions of Section 2205, General Code, requiring that any printing done at either of these institutions should be "done and performed solely for the use of such penitentiary or reformatory or the state department of public welfare."

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

Relief areas are political divisions of the state within the meaning of the sections of the General Code relating to prison labor, and since the production of artificial limbs forms a proper subject for industrial training and instruction to the end that prisoners may become skilled artisans in such work, it is not unlawful for prisoners in the Ohio penitentiary to be employed and used for the purpose of manufacturing such limbs to be sold or disposed of to local relief areas for free distribution to those relief wards requiring such aid.

Respectfully,

THOMAS J. HERBERT,

Attorney General.