

2489.

STATISTICS—EMPLOYEES OF BUREAU OF BUSINESS RESEARCH OF OHIO STATE UNIVERSITY MAY NOT EXAMINE ANNUAL REPORTS OF EMPLOYEES SUBMITTED TO INDUSTRIAL COMMISSION.

SYLLABUS:

The Division of Labor Statistics of the Department of Industrial Relations may not employ some of the statistical clerks of the Bureau of Business Research of the Ohio State University, at a nominal salary, for the purpose of developing in tabular form information desired by said Bureau of Business Research in carrying out its functions of assisting the Division of Labor Statistics of the Department of Industrial Relations.

COLUMBUS, OHIO, April 11, 1934.

Department of Industrial Relations, Columbus, Ohio.

DEAR SIR:—Your recent request for my opinion reads as follows:

"I am enclosing a copy of a letter received from Dr. Spurgeon Bell, Director of the Bureau of Business Research, Ohio State University.

"I desire your opinion as to whether it is proper for us to comply with Dr. Bell's request, in view of Section 1465-46, G. C."

Dr. Bell's letter, to which you refer, is as follows:

"As you may know, the Bureau of Business Research, in addition to its regular work of making studies on business management in cooperation with the business associations in the State, is also a research agent for the Ohio Recovery Administration. Consequently, the Bureau is devoting a considerable amount of its time and resources to making studies bearing on the problems of the Ohio Recovery Administration and of the effects of the National Recovery Act on Ohio industries.

"For example, the Bureau is now engaged in a study of the taxicab business in Ohio, with the view of making a report to the Ohio Recovery Administration on the present status of the taxicab industry. The Bureau is also making a study on the effects of the NRA codes on small industries in this State. The Ohio Recovery Administration is also interested in this study because it is interested in securing such modifications of National codes as may be necessary from the standpoint of protection of the small industries in Ohio.

"While the ORA act authorizes the Administration to request research agencies, such as the Bureau of Business Research and the Division of Labor Statistics, to furnish the information, it nevertheless seems desirable that the Bureau of Business Research develop a cooperating relationship with the Division of Labor Statistics, which will make it possible to secure necessary information promptly from the Division of Labor Statistics.

"I am, consequently, suggesting that the Division of Labor Statistics employ, at a nominal salary, \$1.00 per year, some of the statistical clerks of the Bureau of Business Research, placing them under oath of secrecy

so they may develop in tabular form information desired by the Bureau of Business Research in carrying out its functions of assisting the Division of Labor Statistics and the Ohio Recovery Administration.

"Our organization has made similar arrangements in the past with the Department of the U. S. Census and also with the Bureau of Labor Statistics in Washington, D. C. It would, of course, be expected that any of the information released from the Division of Labor Statistics would be released in such form that no information would be divulged in regard to individual cooperations with the department and that no information would be released except that which, under the law, the Division of Labor Statistics is fully authorized to compile and release. If you can make the necessary arrangement for our securing this type of cooperation, it will greatly expedite the work of the Bureau of Business Research and of the Ohio Recovery Administration."

Your inquiry refers to Section 1465-46, General Code, which reads as follows:

"The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the commission by employers in pursuance of the provisions of said section, shall be for the exclusive use and information of said commission in the discharge of its official duties; and shall not be open to the public nor to be used in any court in any action or proceeding pending therein unless the commission is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other state departments and the public. Any person in the employ of the commission or of the department of industrial relations, except such as are so authorized by the commission or the director of the department of industrial relations, who shall divulge any information secured by him while in the employ of the commission or the department of industrial relations in respect to the transactions, property, claim files, records or papers of said commission or department, or in respect to the business or mechanical, chemical or other industrial process of any company, firm, corporation, person, association, co-partnership or public utility to any person other than members of the commission or to the superior of such employe of the commission or of the department of industrial relations shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) and shall thereafter be disqualified from holding any appointment or employment with the commission or the department of industrial relations."

It will be noted that this section refers to the "information contained in the annual report provided for in the preceding section." That section is 1465-45, General Code, and reads as follows:

"Every employer shall furnish the industrial commission of Ohio upon request, all information required by it to carry out the purpose of this act. In the month of January of each year, every employer of the state, employing five or more employes regularly in the same busi-

ness, or in or about the same establishment, shall prepare and mail to the commission at its main office in the city of Columbus, Ohio, a statement containing the following information, viz.: the number of employes employed during the preceding year from January 1st to December 31st inclusive; the number of such employes employed at each kind of employment and the aggregate amount of wages paid to such employes, which information shall be furnished on a blank or blanks to be prepared by the commission; and it shall be the duty of the commission to furnish such blanks to employers free of charge upon request therefor. Every employer receiving from the commission any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the commission in writing good and sufficient reasons for such failure. The commission may require that the information herein required to be furnished be verified under oath and returned to the commission within the period fixed by it or by law. The commission or any member thereof, or any person employed by the commission for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent or employe thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the commission.

"Any employer who shall fail or refuse to furnish to the commission the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the commission under authority of this section, shall be liable to a penalty of five hundred dollars, to be collected in a civil action brought againsh said employer in the name of the state; all such penalties, when collected, shall be paid into the state insurance fund and become a part thereof."

We, therefore, assume that the information desired by the Bureau of Business Research of Ohio State University is the information contained in the annual report and this opinion is based solely upon that proposition.

The question before you is, I believe, that the Bureau of Business Research wishes certain statistics which may be obtained from the annual reports filed by employers, which information you are not now taking from these reports and publishing, and it is the desire of the Bureau that you examine these reports; in order that you may do so, the Bureau wishes you to use one of its employees, whom it is paying from money belonging to it either by way of appropriation or otherwise, and to whom you shall also pay the sum of \$1.00 per year while he is working in your department. This employee is to examine these reports and obtain the data desired, and that thereafter you are to publish the same.

It is to be noted that Section 1465-46, General Code, provides that the annual report of the commission

"shall be for the exclusive use and information of said commission in the discharge of its official duties,"

and that the information contained in the reports of the employers

"shall not be open to the public nor to be used in any court in any action or proceeding pending therein unless the commission is a party to such action or proceeding."

The section does provide, however, that

“the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other state departments and the public.”

It is therefore incumbent upon you to determine how the information contained in the reports of these employers shall be tabulated and published, and in doing this you are permitted to use all the help necessary, subject, of course, to the appropriation made by the General Assembly. However, if you wish to extend these tabulations and there is a necessity for so doing, if you do not have a sufficient number of employees to perform this work the matter may be laid before the Emergency Board which has money appropriated to it to expend among the various departments in the event that special conditions warrant the same.

A reading of the provisions of this section fully warrants the conclusion that no one but an actual employee of the department of industrial relations shall be permitted to examine these annual reports, and that any one “who shall divulge any information secured by him while in the employ of the commission” save and except as provided in Section 1465-46, shall be fined not less than \$100.00 nor more than \$1,000.00.

If it were not for the provisions of Section 1465-46, it might be contended that the Bureau of Business Research, at least with your permission, would be entitled to examine these reports and get such information as it desires for the work which it is carrying on. However, by the provisions of said section it is clearly prevented from so doing.

It seems to me that the appointment of an employee of the Bureau as an employee of your department at the nominal salary of \$1.00 per year, with permission to obtain the information desired, even though your department should eventually publish such information, would be a subterfuge and an act not contemplated by the statute.

It also occurs to me that if you are to appoint any additional employees in your department, you would have to make such appointments according to the civil service law of the state, and would have to make the same from the eligible list or make a provisional appointment under the provisions of the civil service law, if no such eligible list existed.

Section 1465-46 clearly emphasizes the proposition that the information contained in these reports cannot be used by any other state department any more than by the public until your department has made a tabulation thereof and published the same. The statute provides that you have authority to tabulate and publish the information contained in the reports “for the use and information of other state departments and the public.”

If you had authority to grant the request of the Bureau of Business Research in this instance you would also have authority to make, under similar circumstances, an appointment of an employee of a private corporation or individual in the state.

Undoubtedly the aim and purpose of the Bureau of Business Research is useful and laudable and if it could be permitted to do that which it is requesting of you it would obtain helpful information needed in the performance of its functions. However, the law is very plain and specific; if you need additional employees to carry out the functions which you wish to perform, such employees must be appointed according to law. The benefits to be derived from any par-

ticular act do not provide a sufficient reason for the violation of a plain and specific provision of the statute.

It is therefore my opinion that the Division of Labor Statistics of the Department of Industrial Relations may not employ some of the statistical clerks of the Bureau of Business Research of the Ohio State University, at a nominal salary, for the purpose of developing in tabular form information desired by said Bureau of Business Research in carrying out its functions of assisting the Division of Labor Statistics of the Department of Industrial Relations.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2490.

APPROVAL, CONDITIONALLY—DEED EXECUTED BY ALFRED BAKER,
ET AL., TO THE DAYTON AND NORTHERN TRACTION COMPANY.

COLUMBUS, OHIO, April 11, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have requested my opinion as to the status of the title to a strip of land described in a deed executed by Alfred Baker, et al., granting said premises to the Dayton and Northern Traction Company under date of January 8, 1901, which said deed is of record in the Record of Deeds, Vol. 127, pages 287 and 288, of Darke County, Ohio.

You submitted a copy of said deed and it appears that the said grantee above named obtained title free and clear of all encumbrances, and there are no restrictions or reservations in said instrument. It follows, therefore, that if the grantors had good title, and no opinion is expressed upon this subject for the reason that there is no abstract submitted, then the Dayton and Northern Traction Company owns the fee and would have power to convey the same.

It may be noted, however, that in the deed one of the grantors is W. S. Baker, and it does not appear whether he was married or single and, of course, if married, his wife, if living, would have a dower in the premises. This defect could be cleared up by a proper affidavit by someone who is familiar with the facts.

It further appears that the Dayton and Northern Traction Company under date of June 19, 1906, conveyed said premises to the Indiana, Columbus and Eastern Traction Company, and that in said conveyance no reservations or restrictions were made, and said grantee would obtain the fee under said conveyance.

However, said deed does state that said conveyance is subject to the lien of a certain mortgage given by the Dayton and Northern Traction Company to the Central Trust Company of New York, trustee, dated March 1, 1901, securing an issue of bonds in the sum of \$450,000.00. Undoubtedly this lien has been released in the proceedings in the federal court wherein the receiver of the Indiana, Columbus and Eastern Traction Company was authorized to sell the property in question. However, such release does not appear from any papers