

I am of the opinion that the foregoing is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law the following certification:

"I, Herbert S. Duffy, Attorney General of the State of Ohio, pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, hereby certify that the foregoing summary is a fair and truthful statement of the proposed amendment to the Constitution of Ohio by amending Article XII by adopting and adding thereto a new section to be known as Section 13. HERBERT S. DUFFY, Attorney General."

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1608.

UNEMPLOYMENT COMPENSATION BENEFITS — WHEN
PAYABLE — APPLICANTS THREE WEEKS' WAITING
PERIOD.

SYLLABUS:

1. *Inasmuch as benefits under the Unemployment Compensation Act become payable on and after January 1, 1939, an applicant must meet the provisions of Section 1345-6(d), General Code, by showing that he has undergone the three weeks' waiting period regardless of whether said period was in 1938 or 1939.*

2. *The one year period provided for in Section 1345-6(b) (4), General Code, is the year next preceding the date of the application for benefits under the Unemployment Compensation Act.*

COLUMBUS, OHIO, December 13, 1937.

The Unemployment Compensation Commission, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication which reads as follows:

"Your opinion is requested on the following question:
Section 1345-6(a) provides as follows:

'Each eligible individual shall receive benefits as compensation for loss of remuneration due to total or partial unemployment in the amounts and subject to the conditions stipulated in this act; but no benefits shall be paid for total or partial unemployment occurring prior to January 1, 1939.'

Section 1345-6 (b) (4) provides:

'No individual shall be entitled to any benefits unless he or she has been employed by an employer (or employers) subject to this act in at least twenty calendar weeks within one year immediately preceding the date of the application for benefits.'

NOTE: Subsection four above was adopted and passed by the legislature as an amendment to the original bill.

Section 1345-8 (a) provides:

'On and after January 1, 1939, benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.'

There is also a provision in 1345-6 (d) that the applicant for benefits is eligible only after a waiting period of three weeks, once in every 52 weeks.

For the purposes of our question we recapitulate: To be eligible an employee must have worked (a) 'at least 20 calendar weeks within one year immediately preceding the date of the application for benefits,' and (b) 'only after a waiting period of three weeks.'

Question:

(a) In view of the provisions in 1345-6 (a) limiting the payment benefits for unemployment occurring only after January 1, 1939, may the three week waiting period occur in 1938, or is it limited strictly to 1939 only?

(b) Do the provisions of 1345-6 (b) (4) apply to the year 1939 exclusively or do they refer to the year 1938?"

Simply stated, your first question is whether benefits may be paid beginning January 1, 1939, or must all applicants wait until at least three weeks have elapsed in 1939.

The following arrangement of the pertinent statutory provisions, I believe, will help to clarify their meaning:

Section 1345-6 (d).

"An individual suffering total unemployment shall be eligible for benefits for unemployment occurring subsequent to

a waiting period of three weeks, and no benefits shall be or become payable during this required waiting period."

Section 1345-6 (a).

" * * * no benefits shall be paid for total or partial unemployment occurring prior to January 1, 1939."

Section 1345-8 (a).

"*On* and after January 1, 1939, benefits shall become payable from the fund * * *."

The three weeks' waiting period stipulated in Section 1345-6 (a), *supra*, seems to be merely a condition precedent to payment of the benefit. There is no indication in the Unemployment Compensation Act that unemployment which is not preceded by a waiting period of three weeks does not constitute "unemployment" within the meaning of the act. On the contrary, the term "totally unemployed" is defined in Section 1345-1 (k) merely as "an individual shall be deemed 'totally unemployed' in any week during which he performs no service and with respect to which no remuneration is payable to him." Therefore, it seems clear that Section 1345-6 (d), *supra*, would not bar payment on and after January 1, 1939 to a person totally unemployed who can show that he has waited the three weeks' period.

I am further impelled to this conclusion by the wording of Section 1345-8 (a):

"*On* and after January 1, 1939, benefits shall become payable from the fund."

The use of the word "*on*" clearly indicates an intention on the part of the Legislature to have benefits payable immediately following the expiration of the year 1938. Section 1345-6 (a) also impels this conclusion, for in providing "no benefits shall be paid for * * * unemployment occurring prior to January 1, 1939," it implies that benefits should be paid for unemployment occurring, barring the phraseology of Section 1345-8 (a), General Code, "*on* and after January 1, 1939." In other words, the benefits will be paid for the unemployment which occurs in 1939 after the expiration of the year 1938. No benefits will be paid for the three weeks' waiting period and, therefore, the provision of Section 1345-6 (a), that no benefits shall be paid for unemployment occurring prior to January 1, 1939, does not apply to the waiting period.

Your second question involves an interpretation of Section 1345-6 (b) (4), *supra*, which provides:

“(b) No individual shall be entitled to any benefits unless he or she—

(4) has been employed * * * in at least twenty calendar weeks within one year immediately preceding the date of the application for benefits.”

If I understand your inquiry correctly, you want to know what year is referred to in this provision. About this, in my opinion, there need be no uncertainty. First of all, applications will receive no recognition until January 1, 1939, on and after which date benefits become payable and the year referred to in Section 1345-6 (b) (4) is the calendar year next preceding the date of the application. Thus, if the application is made on January 1, 1939, the one year period referred to in Section 1345-6 (b) (4), *supra*, would be from January 1, 1938, to December 1, 1938. If the application were made on the 5th day of January, 1939, the year would be from January 5, 1938 to January 4, 1939, etc. This provision merely creates another condition which an applicant must meet in order to qualify for benefits. In this case, as in your first question, benefits will only be paid for unemployment occurring on or after January 1, 1939, and the prohibition contained in Section 1345-6 (a), *supra*, does not apply to the year period described in Section 1345-6 (b) (4), *supra*.

In specific answer to your inquiry, it is my opinion:

1. Inasmuch as benefits under the Unemployment Compensation Act become payable on and after January 1, 1939, an applicant must meet the provisions of Section 1345-6 (d), General Code, by showing that he has undergone the three weeks' waiting period regardless of whether said period was in 1938 or 1939.

2. The one year period provided for in Section 1345-6 (b) (4), General Code, is the year next preceding the date of the application for benefits under the Unemployment Compensation Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.