

2791.

WORKMEN'S COMPENSATION LAW—STATE INSURANCE FUND—  
WHEN PAYABLE FROM SURPLUS FUND—CERTIFICATION OF AT-  
TORNEY GENERAL NECESSARY.

*SYLLABUS:*

*The Industrial Commission has no authority to pay an award from the surplus fund of the state insurance fund, until after an award has been made against the employer as provided in Section 1465-74 of the General Code and the Attorney General has made an effort to collect and has certified the same to the Industrial Commission as uncollectible. Such procedure cannot be dispensed with because a former award made against the same employer on account of the same injury was paid from said surplus fund, after the Attorney General had certified that such former award could not be collected from the employer.*

COLUMBUS, OHIO, October 29, 1928.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

“We have a number of claims pending before this Commission where the facts are substantially as follows: An award has been made by the Industrial Commission against a non-complying employer who was amenable to the act, for an injury sustained after January 1, 1923. Such an award was not paid by the employer and same was certified to the Attorney General for collection. Later the Attorney General's office reported the employer as ‘Uncollectible’ and such award was later paid out of the surplus fund created by Section 1465-54 after proceedings had and findings made under authority of Section 1465-75 as amended. Later another award for subsequent disability and medical expenses was made which has not been paid by the employer. Has the Industrial Commission authority to order such subsequent award paid from such surplus fund without first proceeding under Section 1465-74, G. C.?”

Section 1465-74 of the General Code, to which you refer, reads in part as follows:

“Any employe whose employer has failed to comply with the provisions of Section 1465-69, who has been injured or has suffered an occupational disease in the course of his employment, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceedings against his employer by civil action in the courts, as provided in Section 1465-73, file his application with the commission for compensation and the commission shall hear and determine such application for compensation in like manner as in other claims and shall make such award to such claimant as he would be entitled to receive if such employer had complied with the provisions of Section 1465-69, and such employer shall pay such award in the manner and amount fixed thereby or shall furnish to the industrial commission a bond, in such an amount and with such sureties as the commission may require, to pay such employe such award in the manner and amount fixed thereby. In the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, or to

furnish such bond, within a period of ten days after notification of such award, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the commission and the commission shall certify the same to the Attorney General who shall forthwith institute a civil action against such employer in the name of the state, for the collection of such award. \* \* \*

The payment of any judgment recovered in the manner provided herein shall entitle such claimant to the compensation provided by this act for such injury, occupational disease or death. The Attorney General shall, as soon as the circumstances warrant, and not more than two years after the date of such award made by the commission, certify to the commission the result of his efforts to recoup the state insurance fund as herein provided, and if he certifies that such award cannot be collected in whole, the award shall be paid from the surplus created by Section 1465-54, and any sum then or thereafter recovered on account of such award shall be paid to the commission and credited to such fund as the commission may designate."

This section provides that an employee of an employer, who has in his service three or more workmen or operatives and has not complied with the provisions of the Workmen's Compensation Law by paying full premium into the state insurance fund, may in case he is injured in the course of his employment file an application with the Industrial Commission of Ohio to determine the amount of compensation which may be due him, under the provision of the Workmen's Compensation Law, from such employer. The section further provides that such an award shall constitute a liquidated claim against said employer and if it is not paid within ten days it shall be certified by the Commission to the Attorney General, who shall institute a civil action against such employer for the collection of the award. The section further provides that in case a judgment is obtained but cannot be collected, the claim may be paid from the surplus fund created by Section 1465-54 of the General Code. The surplus fund is created by setting aside a certain percent of all premiums paid into the state insurance fund.

Section 1465-75 of the General Code provides in substance that if the Industrial Commission finds that any person, firm or corporation has been an employer within the meaning of the Workmen's Compensation Act during any particular period of time, the Commission shall determine how long such person, firm or corporation was such an employer. It provides that certain proceedings shall be had and that the Commission shall determine the amount of premium which such employer should pay into the state insurance fund. It also provides for proceedings in court in case such employer does not comply with said finding of the Commission and that any employee who was injured during said period of time could receive compensation from the state insurance fund after said premium had been paid, and that in case said premium was uncollectible the award should be paid from the surplus fund hereinabove mentioned.

In your request for opinion you state that the claims before you for consideration are against employers who have failed to comply with the provisions of the act; that heretofore awards have been made against the employer under Section 1465-74 of the General Code and certified to the Attorney General as provided in said section. I have been advised by you that in each case an attempt has been made to proceed against the employer as provided in Section 1465-75 of the General Code but no premium could be fixed because the employer could not be located and no evidence relative to the amount of the employer's payroll could be found.

You also state that after the Attorney General attempted to collect the former awards they were reported back as uncollectible and that claims are now before the

Commission upon the question of further compensation and you inquire whether or not the awards should be made under Section 1465-74 of the General Code or whether the compensation should be made direct from the state insurance fund. It is quite clear that both Sections 1465-74 and 1465-75 provide that every effort should be made to collect the award and judgment against the employer before it is paid from the surplus of the state insurance fund. There is no authority to pay compensation to an employee of a non-insuring employer until after an award has been made against the employer as provided in Section 1465-74. The only exception to this provision is that provision of Section 1465-75 of the General Code which provides for payment of an award from the state insurance fund if the premium for the period in which the injury occurred can be collected. However, the section provides that when the award is to be paid from the surplus fund it is the award made against the employer that must be paid. If the Industrial Commission makes an award against an employer, the statute provides that if it is not paid within ten days it should be certified to the Attorney General for collection and he should attempt to collect the same and within two years certify to the Commission the result of his efforts to collect said award as provided by statute. If the award is uncollectible, the amount thereof may then be paid from the surplus fund.

Therefore, specifically answering your question, it is my opinion that the Industrial Commission has no authority to pay an award from the surplus fund of the state insurance fund, until after an award has been made against the employers provided in Section 1465-74 of the General Code and the Attorney General has made an effort to collect and has certified the same to the Industrial Commission as uncollectible. Such procedure cannot be dispensed with because a former award made against the same employer on account of the same injury was paid from said surplus fund, after the Attorney General had certified that such former award could not be collected from the employer.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2792.

EMPLOYMENT AGENCY—LICENSE REVOKED FOR TAKING ASSIGNMENT OF MORE THAN 50% OF PERSONAL EARNINGS OF APPLICANTS FOR POSITION.

SYLLABUS:

1. *Section 6346-12 of the General Code is a law of general application and is not limited to those things referred to in the sections of the General Code contained in Chapter 25a of such Code.*
2. *Any private employment agency, which has been guilty of entering into a contract prohibited by Section 6346-12 of the General Code, may be refused a license by the Department of Industrial Relations of the State of Ohio, on the grounds that said applicant for a license had violated the laws of Ohio.*
3. *Should the Department of Industrial Relations make an order embodying the provisions of Section 6346-12, and forbidding any duly licensed private employment agency from accepting an assignment of more than fifty per cent of the personal earnings of any applicant for a position, upon the violation of such order by such an agency, said department may revoke its license in the manner provided in Section 894, General Code.*