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1. INDUSTRIAL COMMISSION OF OHIO — CERTIFICATE OF PREMIUM PAYMENT ISSUED TO EMPLOYER WHO PAID PREMIUM INTO STATE INSURANCE AND OCCUPATIONAL DISEASE FUND—LICENSE—COMMISSION WITHIN "ADMINISTRATIVE PROCEDURE ACT" — SECTIONS 1465-69, 154-61 TO 154-73, SENATE BILL 36, 95 GENERAL ASSEMBLY.

2. EMPLOYER GRANTED AUTHORITY TO PAY COMPENSATION DIRECT TO ITS INJURED OR DEPENDENTS OF KILLED EMPLOYES, BOND FURNISHED, PREMIUM PAID — LICENSE — ISSUANCE — REVOCATION — COMMISSION WITHIN "ADMINISTRATIVE PROCEDURE ACT" — SECTION 1465-54 G. C.

3. INDUSTRIAL COMMISSION — NO DUTY AND RESPONSIBILITY TO REVOKE A LICENSE TO LICENSED PRIVATE EMPLOYMENT AGENCY—AUTHORITY AND DUTY LEFT IN HANDS OF INDUSTRIAL RELATIONS — EFFECT, AMENDMENT SECTION 894 G. C., SENATE BILL 36, 95 GENERAL ASSEMBLY MODIFIED — SEE OPINION 6528. NOVEMBER 29, 1943, PAGE 666.

SYLLABUS:

1. A certificate of premium payment issued pursuant to Section 1465-69, General Code, by the industrial commission of Ohio to an employer who has paid into the state insurance and occupational disease fund the premium as provided by law, is such a license as will bring the industrial commission in its issuance within the provisions of the "administrative procedure act", as enacted in Senate Bill 36 by the 95th General Assembly and codified as Sections 154-61 to 154-73 of the General Code.

2. A certificate issued by the industrial commission of Ohio pursuant to the provisions of Section 1465-69, General Code, certifying that the employer named therein has been granted authority by said Commission to pay compensation direct to its injured or the dependents of killed employes and that said employer has furnished the necessary bond and has paid the premium required by paragraph 2 of Section 1465-54, General Code, for the period designated in such certificate, is such a license as will bring the industrial commission in its issuance or revocation within the provisions of the "administrative procedure act", as enacted in Senate Bill 36 by the 95th General Assembly and codified as Sections 154-61 to 154-73 of the General Code.

3. The amendment of Section 894, General Code, as contained in Senate Bill 36, passed by the 95th General Assembly, did not place on the industrial commission the duty and responsibility of revoking a license theretofore granted to a private employment agency, but left that authority and duty in the hands of the department of industrial relations.

Columbus, Ohio, October 20, 1943.

The Industrial Commission of Ohio,
Columbus, Ohio.

Gentlemen:

I acknowledge receipt of a communication from your Commission through James H. Davis, Adviser Legal Section, requesting my opinion. This request reads as follows:

"Section 154-62, Ohio General Code, provides in part as follows:

'License means and includes any license, permit, certificate, commission or charter issued by any agency.'

A certificate is a written assurance or official representation that some legal formality has been complied with.

Section 1465-69, Ohio General Code, provides in part as follows:

' * * * and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer. * * * '

We are attaching hereto a copy of the paper which has been used by the Commission for a long period of time. This paper is furnished the employer as evidence of his payment of Workmen's Compensation premium into the State Insurance Fund. Exhibit 'A'.

Section 1465-69, Ohio General Code, further provides with reference to employers who are of sufficient financial ability to render certain the payment of compensation, etc., to their injured employes that they:

' * * * shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph No. 2 of Section 1465-54, General Code.'

For this payment said employer is furnished the paper marked Exhibit 'B' hereto attached and made a part hereof. This paper likewise has been furnished to said self-insured employer as evidence of his premium payment for many years.

Section 154-45, Ohio General Code, is in part as follows:

'The department of industrial relations shall have all powers and perform all duties vested by law in the Industrial Commission of Ohio, excepting the following: * * *'

Following that quotation the exceptions are noted which outline the powers remaining in The Industrial Commission of Ohio. This section was last amended and effective May 15, 1934. Under Section 154-45 it would appear that Section 894 of the Ohio General Code contains powers and duties which were by Section 154-45, on May 15, 1934, transferred to the Department of Industrial Relations. The old Section 894, Ohio General Code, was repealed by amended Senate Bill No. 36, effective September 3, 1943. Thereafter a new section 894, Ohio General Code, was enacted which became effective September 3, 1943. It apparently was enacted by the legislature without giving consideration to Section 154-45.

The answers to the following questions will assist us in the application of the new administrative code to the duties of the Industrial Commission of Ohio:

1. Is the evidence of premium payment hereto attached and marked Exhibit 'A' such a certificate as will bring the issuance and revocation of same under the provisions of the New Administrative Code?

2. Is the issuance of the paper hereto attached and marked Exhibit 'B' to self-insured employers such a certificate as will bring the issuance and revocation of same under the provisions of said New Administrative Code?

3. Does the enactment of the new Section 894, Ohio General Code, naming The Industrial Commission of Ohio, and the repealing of the old section 894 of the General Code, place the duties and responsibilities of administering this new section upon The Industrial Commission of Ohio, or is it still the duty of the Department of Industrial Relations?"

Referring to your first question relative to the certificate submitted which you have designated as Exhibit "A", I note that it is an acknowledgment that the employer named has "paid into the State Insurance and Occupational Disease Fund premium as provided by law and that, therefore, said employer is entitled to the rights and benefits of said fund during the period above set forth." The period covered is indicated by a beginning and ending date.

This is a certificate required by Section 1465-69, General Code, which so far as pertinent reads as follows:

> "Except as hereinafter provided, every employer mentioned in subdivision 2 of section 1465-60, General Code, and publicly owned utility shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by said commission; and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a *receipt or certificate* certifying that such payment has been made shall immediately be mailed to such employer by the industrial commission of Ohio, which receipt or certificate, attested by the seal of said commission, shall be prima facie evidence of the payment of such premium." (Emphasis mine.)

Senate Bill 36, passed by the 95th General Assembly and effective September 3, 1943, enacts Sections 154-61 to 154-73, inclusive, of the General Code, which it denominates the "Administrative Procedure Act." In brief, it undertakes to provide for a hearing for every person or corporation who is affected by a refusal to grant, or by an attempt to revoke, any "license" which may be granted by any "agency" having legal authority to issue or revoke licenses. The bill as enacted also amends many sections of the General Code relating to various public agencies which have such powers.

Section 156-62 contains certain definitions of terms used:

> "'Agency' means and includes any administrative or executive officer, department, division, bureau, board or commission of the government of the state of Ohio having the authority or responsibility of issuing, suspending, revoking or cancelling licenses. It shall not mean and include the public utilities commission of Ohio. Any function of an office, department, division, bureau, board or commission which does not pertain to the issuing, suspending, revoking or cancelling of licenses, shall not be subject to the provisions of this act. * * * "

> "'License' means and includes any license, permit, certificate, commission or charter issued by any agency."

> "'Hearing' means a public hearing by any agency in compliance with procedural safe-guards afforded by the provisions of this act."

It seems clear that the industrial commission, in so far as it may be authorized to issue a license or permit which grants the recipient any right or authority which he could not lawfully possess or exercise without such permit, would be an "agency" within the meaning of the act. It is not specifically excluded as is the public utilities commission, and it further may be asserted that where a business cannot be lawfully conducted without securing such sanction from the agency having authority, such permit is a "license" within the meaning of the act. It seems to me, therefore, that the question to be determined is whether the paper called Exhibit "A" is a license within the meaning of the act.

In State ex rel. v. O'Brien, 130 O. S. 23, 25, the court said:

> "A license is a permission granted by some competent authority to do some act, which without such permission would be illegal. The liquor control act provides for the granting of permits, but an examination of the statutes in various states and of reported cases construing such statutory enactments reveals that the terms 'license' and 'permit' are in general used interchangeably."

Accordingly, if the industrial commission has the power to lay down terms upon which a certain employer may or may not conduct his business, it appears to me that its sanction is nothing less than a permit or license within the purpose and meaning of the Administrative Procedure Act.

This act, in Section 154-67, General Code, grants a hearing to any person to whom a "license" is refused. Provision is made for fixing the time and place of the hearing and for notice to the applicant. Section 154-70 gives the right to the applicant to subpoena witnesses and to compel the production of books, records, etc., and for a stenographic report of the evidence to be made at the expense of the agency.

Section 154-73 provides for an appeal by the applicant to the common pleas court and for the preparation and filing with the court of a complete transcript of the proceedings and the evidence.

It will be noted that Section 1465-69, General Code, refers to the document to be issued to the employer as a "receipt or certificate". Plainly it is a receipt. But is it not something more? If we could assume that the classification of employments and rates which determine the amount of the employers' semi-annual payment were positively fixed by law, or even by a general and uniform rule of the commission, and could not be the subject of dispute, we might conclude that there was no discretion to be exercised by the commission, nothing of which any individual employer

could complain, and therefore nothing that could give rise to the necessity or propriety of a hearing. But an examination of related sections of the General Code reveals that certain actions of the commission could be arbitrary, and controversies might arise, and suggests that an employer should have a right to be heard and to offer evidence to support his claim to a classification and rate different from that proposed by the commission.

Section 1465-53, et seq., General Code, require the commission to classify occupations, determine the hazards and fix premium rates which are to be applied to the payroll of each employer. But Section 1465-54 provides in part:

> "The industrial commission of Ohio shall have the power to apply that form of rating system which, in its judgment, is best calculated to merit *or individually rate the risk* more equitably, *predicated upon the basis of its individual industrial accident experience,* and to encourage and stimulate accident prevention; shall develop fixed and equitable rules controlling the same, which rules, however, shall conserve to each risk the basic principles of workmen's compensation insurance." (Emphasis mine.)

It is evident that an employer might object very seriously, not only to the classifications into which portions of his business are placed by the commission, but also to the additional charges levied against him because of alleged bad "industrial accident experience."

If his claim and the judgment of the commission conflict, the commission will refuse him the certificate provided in Section 1465-69. His failure to get that certificate and to post it in his place of business (as required by Section 1465-73a) will result in the following penalties being imposed upon him:

1. He is deprived of the immunity from damage suits which the law gives to those who comply, and cannot avail himself of the defenses of the fellow servant rule, assumption of risk or contributory negligence (Sections 1465-70 and 1465-73, General Code).

2. Such employer, or, if it be a firm or corporation, each member of the firm or officer of the corporation, is guilty of a misdemeanor and may be subjected to a fine and imprisonment (Section 1465-69a).

Under these circumstances, it appears to me that the employer falls within the purview of the administrative procedure act, and is entitled to its benefits.

Coming to the paper which you have submitted as Exhibit "B", I am

of the opinion that a like rule must apply. It is also authorized by Section 1465-69, and an examination of parts of that section will disclose that it involves a procedure that should call for application of the "administrative procedure act" as clearly as does issuance of the paper called Exhibit "A". Portions of the section in question read as follows:

> " * * * And provided further, that such employers and publicly owned utilities who will *abide by the rules* of the industrial commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 1465-78 to 1465-89, General Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, *may, upon a finding of such fact by the industrial commission* of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the *industrial commission* of Ohio *may require such security or bond* from said employers and publicly owned utilities *as it may deem proper,* adequate and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation * * * ; and said commission shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission * * * . The industrial commission of Ohio *may at any time change or modify its findings of fact* herein provided for, or *revoke the right* of such employer or publicly owned utility to pay compensation direct, if in its judgment such action is necessary or desirable * * * . " (Emphasis mine.)

The certificate, Exhibit "B", recites that the employer named "has been granted authority by this Commission to pay compensation direct to its injured or the dependents of killed employes, as provided in Section 1465-69, General Code, and that said employer has furnished the necessary bond, and on ——— paid premiums to the Catastrophe Fund for eight months, beginning ———."

Since the statute authorizes the above outlined procedure in the granting and issuing of this certificate and in the revocation of the privilege which it evidences, it appears that it comes clearly within the scope of the administrative procedure act, and subjects the Commission in the performance of this particular function to the regulations contained in the act.

Your third question calls for an interpretation of Section 894 of the General Code, as amended by the 95th General Assembly (Senate Bill 36), and a determination of the extent to which, if at all, it imposes duties upon the Industrial Commission relative to the revocation of licenses which have been granted by the Director of Industrial Relations to private employment agencies.

This section was a part of the act found in 108 O. L. Part I, p. 349, which as enacted provided for the licensing of persons, firms or organizations engaging in the business of an employment agency for hire. This act was codified as Sections 886 to 896-16, inclusive, General Code, and until the recent amendment of Section 894 has been in effect without change since 1919.

The act embraced all the proceedings relative to licensing such employment agencies, including the collection of license fees, requirement of bond by the applicant, revocation of license, regulation of fees to be charged by such agency and the making of rules and orders, all of which powers were vested in the industrial commission.

In the enactment of the State Administrative Code in 1921, a large portion of the powers theretofore vested in the industrial commission were by Section 154-45, General Code, transferred to the department of industrial relations, which was then created. Said section 154-45 reads in part as follows:

> "The department of industrial relations shall have all powers and perform all duties vested by law in the industrial commission of Ohio, excepting the following: * * * "

Here follows a statement of the powers reserved in the Commission which include the powers which it exercised as successor of the state liability board of awards, the state board of arbitration, the board of boiler rules, and the powers mentioned in certain enumerated statutes relating to standards, devices, safeguards and means of protection in industry, which enumerated sections do not include those mentioned above relating to the licensing of private employment agencies. Section 154-45 further commits to the industrial commission the administration of the workmen's compensation law.

It is thus made very clear that the legislature, in enacting the administrative code, considered it wise and proper to take from the industrial commission the regulation of private employment agencies and to transfer all duties with respect thereto to the director of industrial relations. The statutes, however, defining the former powers of the industrial commission

in this and many other respects, were left unrepealed and were evidently intended as a guide to the director of industrial relations in determining and exercising the powers which he had inherited from the industrial commission by virtue of the transfer above noted.

Section 894, General Code, prior to the recent amendment in Senate Bill No. 36, read as follows:

> "If the industrial commission of Ohio as herein provided, shall find a licensee, or representative, partner or employee of such licensee has been convicted in any court of the state of Ohio of violating any of the provisions of this act or orders of the industrial commission, or if such licensee, or representative, partner, or employee of such licensee has been guilty of violating any of the provisions of this act (G. C. sections 886 to 896-16) or orders of the commission or is found by the industrial commission to be not of good moral character, said industrial commission may revoke said license which shall thereupon become null and void *and said industrial commission shall immediately notify such licensee of such revocation whereupon such licensee may within ten days after the issuance of such notice petition the industrial commission of Ohio for a hearing in the same manner as is provided for employers or other persons specified in section 27 of the industrial commission act, approved March 18, 1913* (103 O. L. 95)." (Emphasis mine.)

The words which I have emphasized were by the recent amendment eliminated and there was substituted therefor the following:

> "after a hearing shall be had in accordance with the provisions of the administrative procedure act."

Otherwise, the section remains precisely as originally enacted.

Standing alone, this newly amended section might appear to be evidence of the intent on the part of the Legislature to recreate in the industrial commission the power and duty to revoke a license with which they had nothing to do in granting and which had been expressly taken from them and placed in the hands of another department of state. If we are to take the words of the statute literally and without reference to their setting and without consideration as to their part in the general scheme of legislation, we might have to come to that conclusion.

There is no apparent ambiguity in the wording of this statute and therefore no opportunity for applying rules of construction designed to determine what was the meaning of the words used in the enactment.

We are not without authority, however, in holding that it is within the proper scope of statutory interpretation and construction to look into extrinsic circumstances and related statutory provisions for the purpose of determining the legislative intent even where a statute contains on its face no ambiguity. Crawford on Construction of Statutes, Section 174.

It was said in the case of Tillinghast v. Tillinghast, 25 Fed. (2nd) 531, 533:

> "Unambiguous words call for no construction, but when unambiguous words are used in such a manner as to produce ambiguous or uncertain results, or to produce a manifest injustice or absurdity, not within the reasonable contemplation of the legislature, then it is the duty of the court, in applying the law, to give it such application as is reasonably within the intent of the law."

It is a fundamental rule that sections and acts in pari materia will be construed together in the effort to arrive at the legislative intent. And this is especially true in regard to a code of statutes relating to one subject or having in view a common object. 37 O. Jur. p. 597, citing numerous cases.

Referring to the simultaneous repeal and re-enactment of a statute, it is said in 37 O. Jur. p. 428:

> "The constitutional provision that no law shall be amended unless the new act contains the section or sections amended, and the section or sections so amended shall be repealed, is not intended to change the operation of the original sections as to portions thereof which were not changed." Citing State ex rel. v. Spiegel, 91 O. S. 13.

In that case the court laid down the above proposition and also held

> "An act amending one or more sections of a statute should be considered in connection with the whole statute of which it has become a part, the object intended to be accomplished by the law, the imperfections to be removed and the changes to be made by the amendment."

The court in its opinion, p. 19, quoted with approval from McKibben v. Lester, 9 O. S. 627, where it was said:

> "Where one or more sections of a statute are amended by a new act, and the amendatory act contains the entire section or sections amended, and repeals the section or sections so amended, the section or sections as amended must be construed as though

> introduced into the place of the repealed section or sections in the original act, and, therefore, in view of the provisions of the original act, as it stands after the amendatory sections are so introduced."

The court also quotes Lewis' Sutherland on Statutory Construction (2 ed.) 237:

> "So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal reenactment should have the effect of disturbing the whole body of statutes *in pari materia* which had been passed since the first enactment. There must be something in the nature of the new legislation to show such an intent with reasonable clearness. * * * The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; * * * ."

To like effect, State ex rel. v. Fulton, 99 O. S. 168, 177.

Applying these rules, I find that the Legislature has in no respect manifested a disposition to take out of the hands of the department of industrial relations the control over private employment agencies nor to place back upon the industrial commission the responsibility or authority pertaining to their supervision.

Obviously they employed this amendment of Section 894 as the simplest mode of changing slightly the procedure whereby the proper authority may revoke a license. The Legislature presumably had in mind the fact the whole subject matter had been transferred to the director of industrial relations and, without complicating the procedure unnecessarily, the simplest mode of providing for a hearing on the revocation of such license was to amend the statute as it stood, trusting that the director, or anyone else concerned, would recognize the sole purpose of the amendment, which was to provide for an orderly hearing as a condition precedent to a revocation. There is also significance in the elimination of the last portion of the original section providing for a petition to the industrial commission for a hearing on such order of revocation.

My conclusion is strengthened by an examination of the entire text of Senate Bill 36, passed by the 90th General Assembly, which bill was designed, as indicated by its title, for no other purpose than to provide uniform procedure by the numerous licensing agencies of the state in the granting and revocation of licenses. The title of the bill itself furnishes the key to the entire purpose of the act. It reads:

"AN ACT — To supplement sections 154-61 to 154-73, inclusive, of the General Code, to provide uniform administrative procedure for the several licensing agencies of state government; to amend sections * * * ; and to repeal sections * * * of the General Code of Ohio."

Coming to a consideration of the provisions of Senate Bill 36, we observe that new sections 154-61 to 154-73, inclusive, denominated the "administrative procedure act", provide for the procedure of all licensing agencies in adopting rules and regulations for their respective departments and in granting and revoking licenses. The sections amended relate specifically to the numerous boards and officers who have power to grant licenses in their special fields, and in almost every case the amendment consists in adding the words "in accordance with the provisions of the administrative procedure act." In a few cases there are additional provisions, as in the case of Section 894, requiring a hearing "held in accordance with the provisions of the administrative procedure act."

To hold that the amendment to Section 894 was intended to take from the director of industrial relations a fragment of his power relative to the control of private employment agencies and impose it in the industrial commission would result in absurdity and confusion, and I cannot reach the opinion that the Legislature intended so to do. The law plainly intends that the same authority should grant the license, make rules for the government of licensees and enforce those rules, as well as the requirements of the statutes, and in proper cases revoke the license.

Accordingly, in specific answer to your three questions, I am of the opinion:

1. A certificate of premium payment issued pursuant to Section 1465-69, General Code, by the industrial commission to an employer who has paid into the state insurance and occupational disease fund the premium as provided by law, is such a license as will bring the industrial commission in its issuance within the provisions of the "administrative procedure act", as enacted in Senate Bill 36 by the 95th General Assembly and codified as Sections 154-61 to 154-73 of the General Code.

2. A certificate issued by the industrial commission pursuant to the provisions of Section 1465-69, certifying that the employer named therein has been granted authority by said Commission to pay compensation direct to its injured or the dependents of killed employes, and that said employer has furnished the necessary bond and has paid the premium to the catastrophe fund for the period designated in such certificate, is such a license as will bring the industrial commission in its issuance or revocation

within the provisions of the "administrative procedure act", as enacted in Senate Bill 36 by the 95th General Assembly and codified as Sections 154-61 to 154-73 of the General Code.

3. The amendment of Section 894, General Code, as contained in Senate Bill 36, passed by the 95th General Assembly, did not place on the industrial commission the duty and responsibility of revoking a license theretofore granted to a private employment agency, but left that authority and duty in the hands of the department of industrial relations.

Respectfully,

THOMAS J. HERBERT,
Attorney General.