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1. WORK RELIEF PAYMENTS—NOT DEDUCTIBLE FROM UNEMPLOYMENT COMPENSATION WHEN AMOUNT OF WORK PERFORMED HAS NO BEARING ON AMOUNT OF RELIEF RECEIVED.

2. INCOME FROM UNEMPLOYMENT COMPENSATION — SHOULD BE CONSIDERED TO DETERMINE AMOUNT OF RELIEF TO WHICH PARTICULAR RELIEF APPLICANT ENTITLED.

SYLLABUS:

1. Work relief payments are not deductible from unemployment compensation when the amount of work performed has no bearing whatsoever on the amount of relief received.

2. The income from unemployment compensation should be considered in determining the amount of relief to which a particular relief client is entitled.

Columbus, Ohio, May 12, 1949

Hon. Frank J. Collopy, Administrator
Bureau of Unemployment Compensation
Columbus, Ohio

Dear Sir:

You have requested my opinion in your recent letter which reads as follows:

> "Attached hereto is a letter from the Department of Public Welfare, which is self explanatory.
>
> "No reference to sections of the General Code are given in this letter, but it is believed that Sections 3391-2 and 3493 are applicable to the questions raised. With reference to unemployment benefits, your attention is invited to Section 1345-8, General Code, as well as the definitions of 'totally unemployed' and 'partially unemployed' found in Sections 1345-1-k and 1345-1-l.
>
> "Your opinion is requested as to the relationships between 'work relief' and 'unemployment benefits.' Specifically we should like to be advised as to whether or not we are required to deduct 'work relief' payments from the amount of benefits to which an unemployed person may be entitled, in view of the provisions of Section 1345-8-c."

The letter directed to your office from the Department of Public Welfare, referred to in your request for my opinion, reads as follows:

> "Several county relief agencies have written to this office concerning the relationships between work relief programs and payments from the Bureau of Unemployment Compensation. The most recent inquiry is from Walter M. Costello, Director of the Montgomery County relief area. In accordance with the state relief law Mr. Costello has been assigning persons found eligible for relief to work in various city departments. The men are permitted to work only enough hours at prevailing rates to earn the budgetary deficit. In other words, they receive through work relief exactly the same amount as they would receive in cash on direct relief but are contributing a service to the city in return for the assistance.
>
> "It is our understanding that work relief earnings are being deducted from the unemployment benefits to which these persons would otherwise be entitled. If it is necessary to follow this practice under the laws governing your program, it will mean that no work relief program can be developed except for persons who have exhausted their benefits.
>
> We would appreciate your reconsideration of this decision and the opinion of the Attorney General if you feel that is necessary. While the problem is not great at the present time, it may become larger at any moment and we feel that it will be helpful in planning the expenditures of relief funds to know the correct procedure."

In reply to your communication, attention is invited to Section 3391 of the General Code, which defines "work relief" as administered under the Poor Relief Act:

> "* * * Poor relief may take the form of 'work relief,' * * *"
> "The term 'work relief' means poor relief given in exchange for labor or services."

Section 3391-2 of the General Code provides that poor relief shall be dispensed on a budgetary basis, and that the amount of relief which a relief client may receive is based upon the results of careful investigation to determine the amount which might be justified in each particular case.

Following the dictates of this statute, I feel reasonably justified in assuming that no relief shall be granted in addition to unemployment benefits unless such relief is absolutely necessary, and I further must assume that the income from unemployment compensation is considered in determining the amount of relief to which a particular relief client is entitled.

Although these assumptions have no direct application to the problem involved, they are necessary to intelligently weigh the merits of this opinion.

Work relief, as now granted, stands in the same position as direct relief. The amount of relief granted is not determined by the amount of work done, but by the needs of the relief client. In view of the fact that the income from unemployment compensation should be considered in determining the amount of relief to which a particular relief client is entitled, the practical effect of the deductions from unemployment compensation only increases proportionately the burden of the relief agencies. The relief clients themselves are not materially affected when the "need test" is applied, whether or not the deductions are made from their unemployment compensation, because their needs will fluctuate accordingly.

The present attitude toward "work relief" in respect to "unemployment compensation" undoubtedly stems from various interpretations of sections of the Unemployment Compensation Act.

Section 1345-1-c (Definitions) says in part:

> "* * * the term 'employment' means service performed for wages under any contract of hire, written or oral, express or implied, * * *."

The services performed through "work relief" look forward to no definite wage, and I can visualize no "contract of hire" where the employee will be compensated whether or not he performs any work. It must be remembered that "work relief" relationships are not the result of free, mutual contracts, but are rather due to unfortunate circumstances where the relief client is the object of the county's bounty. Obviously, the purpose of "work relief" was not to promote employment contracts, but rather to keep men occupied so that they may not become criminal as well as civil charges of the county.

Section 1345-1-f recites in part:

> " 'Remuneration' means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash."

The public aid received through "work relief" is not in reality compensation for services rendered because the relief shall be granted whether or not the work is done. The work involved in such cases is actually a

condition subsequent to the receipt of a public gratuity. I am of the opinion that "work relief" employment alone would not be sufficient to guarantee eligibility for benefits afforded by the unemployment compensation act, and therefore I fail to see how such a "relief arrangement" can be used as the basis for reducing rights to unemployment compensation.

Section 1345-6 provides a test which one must meet to receive benefits for total unemployment or partial unemployment, and, among other things, he must be able and available for work and unable to obtain work, and to receive benefits must be totally or partially unemployed.

On the basis of this statute, there is possibly some credence to a holding that "work relief" is "partial employment" or that "work relief" does not leave one available for work, but such a holding would defeat the very purposes of the Unemployment Compensation Act as well as the "work relief" program, which are to alleviate social burdens of individuals between periods of "real" employment.

Many other sections of the Unemployment Compensation Act could be cited which tend to favor the deductions of "work relief" from "unemployment benefits," but such references are unnecessary since it is obvious that the cumulative effect of the Act was never intended to embrace a situation where men will be penalized for working.

As stated in the case of Crossman v. New Bedford Institute, 160 Mass. 503, 36 N. E. (2nd) 477:

> "No class of citizens should be held to be debarred from the right to ask for relief under the poor laws unless by explicit declaration of the Legislature, or by necessary or unavoidable implication. The fact that some other provision is made under which a citizen may be relieved is not of itself enough to take away his right to determine and receive assistance as a pauper."

It is accordingly my opinion that "work relief" should be included within the general concept of direct relief, and that if reasonable subsistence, compatible with health and well-being, depends upon relief in addition to unemployment compensation, then work performed for that relief should not be deducted from the benefits provided by the Unemployment Compensation Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.