

OFFICIAL OPINIONS

1935-1936

OPINION NO. 161

State government—Officials—Right to compensation—Necessity for statutory authority—Director of State Planning Board—Voluntary assistance to State departments—Reception of salary from Federal Government—Constitution, article xii, sec. 2.

1. The employment of an agent by the State Planning Board, a body created by the Governor at the request of a Federal board, presumably to carry on in this Commonwealth activities sponsored throughout the nation by such Federal board, but having no sanction in Pennsylvania law, can create no obligation on the part of the State to compensate him for his services.

2. The fact that the work of an employe of a State board created by the Governor without sanction of statute is of help to several State departments does not authorize payment for his services from the appropriations for such departments where the departments had no part in his employment and his services were, so far as they were concerned, rendered voluntarily; and legislation authorizing such payment would be unconstitutional.

3. Article xii, sec. 2 of the State Constitution, providing that no person holding office under the United States shall at the same time hold a salaried office of this State, prohibits any payment from State funds to the director of the Pennsylvania State Planning Board who is receiving a salary as consultant for the National Resources Board.

DEPARTMENT OF JUSTICE,

Harrisburg, Pa., January 2, 1935.

Honorable Edward B. Logan, Budget Secretary, Harrisburg, Pennsylvania.

Sir: You have asked us whether certain State departments may place on their pay rolls and pay salary to a man who is designated as director of the State Planning Board under the following circumstances:

At the request of the National Resources Board of the Federal Government, the Governor appointed a State Planning Board, consisting of the Secretaries of Welfare, Labor and Industry and Forests and Waters, the Superintendent of Public Instruction, the Budget Secretary, a member of the House of Representatives, the Executive Director of the State Emergency Relief Board, and two private citizens. He prescribed the duties of the board to be:

“the preparation of a preliminary plan for Pennsylvania containing a program of public works for ten years or more, a plan for a coordinated transportation system, a general

classification of the State into areas of suitable land use, and other studies such as housing, power, government reorganization, and the like."

The creation of the board was not authorized by any Act of Assembly.

The man in question did some work for the board for a period of seventeen days prior to October 11. On that day the Federal Government appointed him to the position of consultant for the National Resources Board at a salary of twenty-five dollars a day, which he has received since that time. The State Planning Board has designated him as its director, but he will continue to draw his Federal salary.

You say that the board is of the opinion that the director should be paid from State funds for the seventeen days of work he did in Pennsylvania before October 11 and also that the State ought to pay him a salary of \$125.00 a month in addition to his Federal salary. Your inquiry is whether such payments may be made.

In reply to our inquiry as to the nature of the duties of the director you say that he "is supervising the preparation of a report which the State Planning Board aims to deliver to the Governor * * *. This report deals with education, welfare, forests, water resources, industry, employment and other questions. In composing the section of the report on these various subjects and in making plans therefor, [he] works with the various [State] departments. It is considered that the plans that are being made are of considerable help to the various departments."

The director's work during the seventeen days prior to October 11 was of the same kind.

If the director may be paid from State funds, it is proposed to have him placed on the pay rolls of the Departments of Welfare, Public Instruction, Forests and Waters and Labor and Industry.

First, as to payment for this man's services prior to October 11.

You do not say whether, during the period prior to October 11 for which he wants the State to pay him, the director was in the pay of the Federal Government in any capacity. If he was, then what we shall have to say about payment of salary after that date will be equally applicable to salary for the preceding period. For the moment we shall assume that for the seventeen days immediately before October 11 he was not on any Federal pay roll.

As we have said, the State Planning Board was created by the Governor at the request of a Federal board, presumably to carry on in Pennsylvania activities sponsored throughout the nation by the Federal board. It has no sanction in the statutes of Pennsylvania, and therefore, it would have no authority in itself to expend State

funds for any purpose. Consequently, the mere employment of the director by the board could create no obligation on the State to pay him.

However, it is said that his work is considered to be of considerable help to several State departments, and on that basis it is suggested that he might be paid from departmental appropriations. The difficulty with that proposal is that he was not employed by those departments or by any department of the State Government. He was engaged by the Planning Board to work for it, in carrying out the purposes of the National Resources Board. He cannot now be paid by the State departments for past services which, so far as those departments were concerned, were rendered by him solely as a volunteer, while he was working for an extra-legal body which could not incur any obligation for the Commonwealth. Even the legislature could not now constitutionally pass an act authorizing payment for such past services: Constitution of Pennsylvania, Art. III, Sec. 11; *Shiffert v. Montgomery County*, (No. 1), 5 Pa. Dist. 568 (1896).

We now turn to the question of the payment of a salary to the director from State funds for services after October 11, 1934.

Irrespective of any other considerations which may bear on this question, the principles above stated as to services rendered prior to October 11, 1934, would operate to prevent the fixing of any salary retroactive to October 11. However, there are other obstacles which would make it illegal to pay this man any salary from State funds for any period after October 11, 1934, past or future, under existing circumstances.

Article XII, section 2 of the State Constitution provides:

"No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what offices are incompatible."

That section is self-executing; no act of the legislature is needed to make it effective: *DeTurk v. Commonwealth*, 129 Pa. 151 (1889).

The man here in question holds a Federal appointment for which he is paid a salary amounting to over \$7,500.00 a year. There could be no doubt that he is thus holding and exercising an office or appointment of trust or profit. It is now proposed to pay him from State funds for acting as director of the State Planning Board. In our opinion that would be exercising an office in this State. The legal impossibility of paying a State salary under these circumstances, in view of Article XII, section 2 of the Constitution, is too apparent to require further comment.

Therefore, we advise you that under the circumstances stated earlier in this opinion, it would not be lawful to pay from State funds to the director of the State Planning Board any salary or compensation for services rendered while he holds an office or appointment of trust or profit under the United States. Nor would it be lawful to carry out the proposal of paying the director from certain State department appropriations for the period prior to the time he was put on the Federal pay roll, since he was not employed by those departments and was not intended to be their employe.

Very truly yours,

DEPARTMENT OF JUSTICE,

HARRIS C. ARNOLD,

Deputy Attorney General.

OPINION NO. 162

Taxation—Jurisdiction—State transfer inheritance tax—Estate of non-resident alien—Stock of domestic corporation—Acts of June 20, 1919 and June 22, 1931—Constitutionality—Due process—Discrimination—Fourteenth amendment—Franco-American Treaty of 1853—Federal abrogation of State rights—Tax treaty.

1. Neither the common law nor the due process clause of the fourteenth amendment prevent one of the States of the United States from imposing a transfer inheritance tax on shares of stock of a corporation domestic to that State, which form part of an estate of an alien dying resident in a foreign country, whether or not the shares are physically present within the territorial limits of the taxing sovereign.

2. The transfer inheritance tax imposed by section 1 of the Act of June 20, 1919, P. L. 521, as last amended by the Act of June 22, 1931, P. L. 690, sec. 2, is uniformly imposed upon the property of all persons subject to the jurisdiction of the Commonwealth of Pennsylvania, the only exclusions being based upon residence rather than nationality, and the statute is not therefore violative of the Franco-American Treaty of 1853, 10 Stat. at L. 1096, which guarantees French citizens all exemptions from State taxation accorded American citizens.

3. Not decided, whether the Federal Government, in the exercise of the treaty-making power granted it by the Federal Constitution, may abrogate or interfere with the right of the several States to levy and collect taxes from aliens.

DEPARTMENT OF JUSTICE,

Harrisburg, Pa., January 3, 1935.

Honorable Walter J. Kress, Secretary, Board of Finance and Revenue, Treasury Department, Harrisburg, Pennsylvania.

Sir: You ask to be advised whether the Board of Finance and Revenue may grant a petition for refund of transfer inheritance tax