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CIVIL SERVICE COMMISSION, STATE—ONLY DUTY IN CERTIFYING PAYROLL IS CERTIFICATION PERSON NAMED IN ESTIMATE, PAYROLL OR ACCOUNT HAS BEEN APPOINTED, PROMOTED, REDUCED, SUSPENDED OR LAID OFF OR IS EMPLOYED IN PURSUANCE OF CIVIL SERVICE ACT AND ADOPTED RULES.

SYLLABUS:

The only duty of the State Civil Service Commission in certifying a payroll is certification that the person named in such estimate, payroll or account has been appointed, promoted, reduced, suspended or laid off, or is being employed in pursuance of the civil service act and the rules adopted thereunder.

Columbus, Ohio, April 20, 1949

Miss Gertrude Jones, Chairman, Civil Service Commission
Columbus, Ohio

Dear Madam :

This will acknowledge your recent request for an opinion, the pertinent part of which is as follows :

“The Department of Highways has submitted retroactive payrolls to this Commission for approval for some twenty employees of its Central Office covering the period from January 1, 1945, to December 31, 1948, inclusive. These payrolls are for amounts which the Department of Highways states have been deleted from their payrolls through the period House Bill 484 has been effective and are based upon an interpretation of the provisions of this act.

“The question involved is whether an increase in the annual salary of an employee received between June 30, 1944, and December 31, 1944, not in excess of \$240 shall be included in computing the \$900 per annum limitation as provided by this act.”

* * *

“This question has been discussed in two informal opinions from the Attorney General of Ohio. The first was to the Industrial Commission, dated November 21, 1945, and signed by Hugh S. Jenkins. The second was to Honorable Earl L. Reeb, Director of the Department of Highways, dated August 25, 1948, and signed by Hugh S. Jenkins.

The amounts involved are :

Year 1945	\$2590.74
Year 1946	2622.05
Year 1947	2416.75
Year 1948	2321.67

Total of the retroactive payrolls.....	<u>\$9951.21</u>
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Should this Commission approve these retroactive payrolls?"

Your inquiry directs my attention to the question of whether or not your commission may approve certain retroactive payrolls of the Department of Highways as obligations of the state of Ohio. I believe this inquiry may be answered by a discussion of the authority of the Civil Service Commission with reference to certification of payrolls for employees under Civil Service. The only certification required and the only certification the commission may give is that the persons named on the payroll are in the classified service, are appointed in pursuance of the civil service laws of Ohio, and have not been suspended or laid off.

Section 486-21, General Code, is as follows :

"Payrolls. After taking effect of this act it shall be unlawful for the Auditor of State or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employe, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or, in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act (G. C. Sections 486-1 to 486-31) and the rules adopted thereunder.

"Any sum paid contrary to the provisions of this section may be recovered from any officer or officers making such payment in contravention of the provisions of law and of the rules made in pursuance of law; or from any officer signing or countersigning of any warrant for the payment of the same, or from the sureties on his official bond, in an action in the courts of the state, maintained by a citizen resident therein. All moneys recovered in any action brought under the provisions of this section must, when

collected, be paid into the treasury of the state or appropriate civil division thereof, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action."

Rule XIV of the Civil Service Commission is as follows :

"Section 1. All pay rolls for employes in the classified service shall be submitted for the Commission's approval as often as issued.

"Pay rolls when verified by the Commission shall be stamped as follows, and shall be forwarded to the proper disbursing officer for payment :

"This certifies that the persons in the classified service named on this payroll, except as indicated by notation, have been appointed in pursuance of the civil service laws of Ohio and are appearing in the proper classification, including grade and rate if any, as shown by the records of this office.

(Date)

"This approval does not prevent the refusal to certify subsequent payrolls if found to be in violation of the law or of the rules of this Commission.

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"Section 2. All items not approved by the Commission shall be stamped with the words 'not approved,' and such items shall not be paid by the disbursing officer until approved by the Civil Service Commission."

From the above quoted matter it may be seen that no authority is given the commission to certify that the amounts set out represent valid obligations of the state of Ohio. To permit the commission to so certify would be giving it additional powers, and by so certifying it would be treading upon the jurisdiction of the Auditor of State.

It is the duty of the auditor to determine whether such payrolls are legal obligations of the state after the Civil Service Commission certifies the payroll in the aforementioned manner. The duty is expressly conferred on the auditor in Section 243, General Code, which reads as follows :

"The auditor of state shall examine each voucher presented to him, or claim for salary of an officer or employe of the state, or per diem and transportation of the commands of the national guard, or sundry claim allowed and appropriated for by the general assembly, and if he finds it to be a valid claim against the state and legally due, and that there is money in the state treasury duly appropriated to pay it and that all requirements of law have

been complied with, he shall issue thereon a warrant on the treasurer of state for the amount found due, and file and preserve the invoice in his office. He shall draw no warrant on the treasurer of state for any claim unless he finds it legal, and that there is money in the treasury which has been duly appropriated to pay it."

This question has been discussed in several opinions of the Attorney General. For example, in Opinion No. 2239, Opinions of the Attorney General for 1940, at page 415, quoting from a former opinion, it is stated:

"It will be noted that this provision provides that no salary shall be paid to an officer or employe in the classified service of the state until the proper civil service commission has certified "that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act and the rules adopted thereunder." Therefore, the Civil Service Commission when inspecting a payroll to determine whether or not it shall be certified, is required to give consideration only to the things enumerated, viz., whether the persons whose names appear thereon, have been appointed, promoted, reduced, suspended, or laid off, or are being employed in pursuance to the provisions of the civil service law. All these matters relate to the manner of employing the appointee. If such employe has been legally employed, the status of the employe continues to exist until changed or terminated as provided in Section 486-17a, General Code, hereinafter quoted. There is no authority found in said section or any other section which authorizes the civil service commission to refrain from approving a payroll because such commission may be of the opinion that some employe had violated the provisions of the act."

At page 417 it is stated:

"A similar question was considered in the New York case of *The People, ex rel. Bedford v. McWilliams, et al.*, as the Civil Service Commission, 56 Misc. N. Y. 296. The plaintiff in that action sought a writ of mandamus to force the Civil Service Commission to approve the payroll bearing his name. The Commission refused approval because the plaintiff was, in violation of the civil service act, performing duties for which he was not properly classified. The court in the course of the opinion said at page 297:

"The law requires upon the payroll "The certificate of the municipal civil service commission of such city that the persons named in such estimate, payroll or account have been appointed

or employed or promoted in pursuance of law and of the rules made in pursuance of law' ”.

The court went on to say at page 298 of the case as follows :

“I am of the opinion that, if a payroll is presented to the municipal commission by the head of a department, bearing the name of a person who it appears from the official roster of the municipal commission has been duly appointed to the position assigned him on said payroll, it is the duty of the municipal commission to attach its certificate; and that the full scope and effect of such certificate is that the commission certifies that such person is qualified for appointment to the position assigned him on the payroll, and that he was duly appointed thereto, and no more.”

On page 299 of the case it is stated :

“There being no dispute as to the fact that Bedford was duly appointed to the position of foreman of laborers, and his name appearing in such capacity on the payroll certified by the head of the department, it becomes the duty of the municipal commission to affix its certificate; and a peremptory writ of mandamus may issue accordingly.”

In the case of *The People, ex rel. Doyle v. Knox, et al.*, 73 N. Y. Sup. 650, at page 652, the court said :

“All the civil service commissioners have to ascertain before certifying the payroll is whether or not the persons named therein have been appointed, or employed, or promoted in pursuance of law.”

In a concurring opinion in the same case, it is said by Bartlett, J. :

“The duty to certify grows out of the fact, * * * that the relator has been appointed janitor * * * pursuant to law and of the rules made in pursuance of law. The charge that a janitor thus appointed is acting in disregard of the law, or of rules made pursuant to law, * * * can only be investigated and determined in a proceeding appropriate for that purpose; and this is not such a proceeding.”

The Attorney General goes on to say :

“It should be noted that the Ohio civil service laws are an adoption of and in most instances use the exact wording of the New York civil service laws. 7 O. J. 510.”

In Opinion No. 98, Opinions of the Attorney General for 1945, at page 40 it is stated :

“You will note from a reading of the entire section, with special attention directed to the above emphasized words, that the certification by the Commission is only that the persons on the payroll have been appointed, promoted, reduced, suspended or laid off or are being employed in pursuance of the civil service law and rules adopted under the authority of that law.

“In an opinion of the Attorney General dated May 1, 1940, and found in 1940 O. A. G., Volume 1, page 413, attention was drawn to the narrow purpose and scope of certification of payrolls by the Commission. The question in that opinion was whether the Civil Service Commission could refuse to certify a payroll bearing the name of a classified employee, who, it was considered, was doing acts in violation of the civil service law which would subject that employee to dismissal. In that opinion a New York case was cited, the People ex rel. Doyle v. Knox, 73 N. Y. S. 650, wherein at page 652 the following statement is found :

“‘All the Civil Service Commissioners have to ascertain before certifying the payroll is whether or not the persons named therein have been appointed, or employed or promoted in pursuance of law.’”

“Since the Ohio civil service laws are an adoption of the New York law on the same subject, the above New York case may be considered as an authority. See 7 O. Jur. 510.”

In Opinion No. 4365, Opinions of the Attorney General for 1935, the second branch of the syllabus reads as follows :

“2. The provisions of Section 486-21, General Code, are mandatory in so far as they require the certificate of approval of payrolls from the State Civil Service Commission.”

By reason of the above mentioned authorities and because of the language of Section 486-21, General Code, the Civil Service Commission should not concern itself with the interpretation of the State Appropriation Act or whether the amount to be paid any employe is correct. The only duty said commission has is to certify that the person named on the payroll is a proper person to be paid.

Rule XIV of the Civil Service Commission gives the correct form of the certification. Nothing else is necessary and after such certification the matter is out of the commission's hands.

Therefore, the only duty of the State Civil Service Commission in certifying a payroll is certification that the person named in such estimate, payroll or account has been appointed, promoted, reduced, suspended, or laid off, or is being employed in pursuance of the civil service act and the rules adopted thereunder.

Respectfully,

HERBERT S. DUFFY,
Attorney General.