

encumbrance estimate No. 124, controlling board certificate and other files relating to the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1836.

COUNTY TUBERCULOSIS HOSPITAL—SUPERINTENDENT AND EMPLOYEES WITHIN CIVIL SERVICE.

SYLLABUS:

The superintendent of a county tuberculosis hospital, and the other employees of such hospital, are included in the classified service of the State of Ohio.

COLUMBUS, OHIO, May 9, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

“We would like to have your opinion on the following question:

‘Must the Superintendent and all employes of the Stark County Tuberculosis Sanatorium be employed under the laws, rules and regulations relating to civil service?’

Our sanatorium was recently opened and to date the only person appointed under the civil service laws was the Superintendent. The trustees have told me that they will not continue to run the institution if it must be subject to the civil service commission of the State of Ohio. They claim that they would materially interfere with the proper operation of the institution.

I understand that the Springfield Lake Sanatorium which is a county sanatorium operated by Summit County is not now, nor has it ever been subject to the civil service laws.

If you have an opinion regarding the above which has already been written, I wish you would mail it to me at once, and if not, we would greatly appreciate your opinion on this question.”

Sections 3139 to 3147, inclusive, of the General Code, provide for the establishing and maintenance of county tuberculosis hospitals.

Section 3141-2, General Code, provides in part as follows:

“* * * The board of trustees so appointed shall have all the powers conferred by law upon the board of trustees of a district hospital for the care of persons suffering from tuberculosis, and all laws applicable to the levy for the erection, maintenance and operation of said district hospital shall apply to the erection, operation and maintenance of said county hospital.”

Section 3150, General Code, provides for the organization of, removal of members from, and the filling of vacancies on the board of trustees of the district tuberculosis hospital. A district tuberculosis hospital is one which is established and maintained by two or more counties, not exceeding ten.

Section 3151, General Code, which refers to the trustees of the district tuberculosis hospital, provides in part as follows:

“Subject to the provisions of this chapter, such board of trustees shall prepare plans and specifications and proceed to erect and furnish the necessary buildings for a district hospital for tuberculosis. They shall appoint a suitable person medical superintendent of the hospital, who shall not be removed except for cause, and, upon the recommendation of the superintendent, such nurses and other employes as may be necessary for the proper conduct of the hospital. The trustees shall fix the compensation of the medical superintendent and other employes. Subject to the rules and regulations prescribed by the board of trustees, the superintendent shall have entire charge and control of the hospitals. * * *”

By the provisions of Section 3141-2, General Code, the board of trustees of a county tuberculosis hospital have all the powers conferred by Section 3151, General Code, upon the board of trustees of a district tuberculosis hospital. Therefore the board of trustees of a county tuberculosis hospital is the appointing authority, and it may appoint a superintendent, and, upon recommendation of the superintendent, may appoint such nurses and other employes that may be necessary. While Sections 3151 and 3148-2, General Code, make the board of trustees the appointing authority, there is nothing in these sections which specifically excepts the position of superintendent or that of other employes of such hospitals from the laws relating to civil service. Nor do the provisions of the sections mentioned in any way conflict with the civil service laws. It might be said at this point, that even if these sections did conflict with the civil service laws of this state, the provisions of the civil service laws would prevail.

This latter view is supported by an opinion rendered by my predecessor, which opinion may be found in the Opinions of the Attorney General, 1928, Vol. II, page 833. The then Attorney General in this opinion said:

“The question in your mind with respect to the application of the civil service laws with respect to the appointment and removal of teachers and instructors of the Ohio Soldiers' and Sailors' Orphans' Home doubtless arises from the fact that Sections 1936 and 1946, General Code, as amended, apparently give the trustees and superintendent of said institution absolute and unrestricted authority in the appointment and removal of instructors, teachers and other employes of said institutions.

A like question with respect to the application of the civil service act of the State of New York was considered by the Court of Appeals of that state in the case of *The People ex rel. McClellan vs. Roberts, Comptroller*, 148 N. Y. 360. In this case it appeared that a provision of the Constitution of the State of New York gave to the head of the Department of Public Works the exclusive and unrestricted power and duty of appointing and removing employes in a certain branch of said department. By reason of this constitutional provision the Court of Appeals had held that the civil service laws of the state had no application to the appointment and removal of such employes. Later a constitutional amendment was adopted by the people of said state which provided that appointments and promotions in the civil service of the state, and of all the civil divisions thereof, should be made according to merit and fitness, to be ascertained as far as practicable by examination, which, as far as practicable, should be competitive; and that laws should be passed to provide for the enforcement of said constitutional amendment. The case of *People ex rel. McClellan vs. Roberts, Comptroller*, arose

after said constitutional amendment providing that appointments and promotions in the civil service of the state should be made according to merit and fitness, and the court in said case held that, by reason of said constitutional amendment, appointments and removals of employes in such branch of the Department of Public Works were subject to the civil service law enacted to carry it into effect. Said court further held that the civil service act, enacted and carried into effect under said constitutional amendment, constituted a general system of statute law applicable to appointments and promotions in every department of the civil service of the state, with such exceptions only as are specified in the statute itself.

Touching this point, the court in its opinion in this case said:

"The principle that all appointments in the civil service must be made according to merit and fitness, to be ascertained by competitive examinations, is expressed in such broad and imperative language that in some respects it must be regarded as beyond the control of the Legislature, and secure from any mere statutory changes. If the Legislature should repeal all the statutes and regulations on the subject of appointments in the civil service, the mandate of the Constitution would still remain, and would so far execute itself as to require the courts, in a proper case, to pronounce appointments made without compliance with its requirements illegal."

I am inclined to the view that a like observation may be made with respect to the scope and effect of the civil service laws of this state as to appointments, promotions and removals in the civil service of the state."

A further discussion of your question requires an examination of the sections relating to the civil service laws of this state to determine whether or not the superintendent or any of the other employees of a county tuberculosis hospital are included in the classified service of the state. The civil service legislation of this state, which has been carried into the statutes as Sections 486-1a to 486-31, inclusive, of the General Code, has been enacted pursuant to the provisions of Section 10, Article XV of the Constitution of Ohio, which reads:

"Appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

Section 486-1A, General Code, provides in part as follows:

"1. The term 'civil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

2. The 'state service' shall include all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts.

3. The term 'classified service' signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof."

Section 486-8, General Code, provides that "the civil service of the State of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service."

This section enumerates certain positions which shall not be included in the classified service, and, after making such enumeration in the unclassified service, provides further as follows:

“The classified service shall comprise all persons in the employ of the state, the several counties, cities, and city school districts thereof, not specially included in the unclassified service, to be designated as the competitive class and the unskilled labor class. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act.”

I have not enumerated the positions of the unclassified service. It is sufficient to say that the position of superintendent of a county tuberculosis hospital and the employees of such hospital are not included in the unclassified service.

It follows, therefore, that the superintendent and other employees are included in the classified service.

Attention is directed to an opinion rendered to the Civil Service Commission by the Honorable Edward C. Turner on December 17, 1927, found in the Opinions of the Attorney General, 1927, Vol. IV, page 2525. The third branch of the syllabus of that opinion is as follows:

“It is the duty of the civil service commission, upon the request of the county commissioners, to certify a list of eligible candidates from which an appointment can be made to the position of medical superintendent of the Franklin County Tuberculosis Hospital, or if such list is not available to hold a competitive examination to provide such list.”

In view of the discussion herein, I am of the opinion that the superintendent of a county tuberculosis hospital, and the other employees of such hospital, are included in the classified civil service of the State of Ohio.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1837.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND SNEAD AND COMPANY OF JERSEY CITY, NEW JERSEY, FOR CONSTRUCTION OF BOOKSTACKS FOR MUSEUM AND LIBRARY BUILDING, OHIO STATE ARCHAEOLOGICAL AND HISTORICAL SOCIETY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$21,360.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, May 9, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State