

4458.

APPROVAL, NOTES OF GREEN CAMP VILLAGE SCHOOL DISTRICT,
MARION COUNTY, OHIO—\$1,500.00.

COLUMBUS, OHIO, June 28, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4459.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE STEUBENVILLE, EAST LIVERPOOL AND BEAVER VALLEY TRACTION COMPANY, FOR ROAD IMPROVEMENT AT YELLOW CREEK, JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, June 28, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4460.

DOG WARDEN—COUNTY COMMISSIONERS MUST MAKE APPOINTMENT FROM LIST CERTIFIED BY CIVIL SERVICE COMMISSION.

SYLLABUS:

It is the mandatory duty of the board of county commissioners to appoint a dog-warden from the list certified by the Civil Service Commission of the State of Ohio for such position.

COLUMBUS, OHIO, June 29, 1932.

HON. PAUL SPRIGGS, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—Your request for my opinion reads:

“The Board of County Commissioners of Paulding County, Ohio, has requested that I write for an opinion of the Attorney General in regard to the following matter:

On August 12, 1927, the Board of Commissioners of Paulding County, Ohio, acting under authority of Section 5652-7 of the General Code of Ohio, appointed a dog warden for Paulding County, who gave bond, entered upon his duties as such warden, and is still acting in this capacity for the present Board of Commissioners of said County.

The State Civil Service Commission of Ohio forwarded to the Audi-

tor of this County its official bulletin of examinations for April 1931, being volume 18, number 4, of such bulletin, which was posted in the Auditor's office of this County.

Section 4287 of the bulletin reads as follows:

'DOG WARDEN—COUNTY SERVICE.

(County Service in Cuyahoga County excepted)

(Salary \$1200 per annum. Examination fee, one dollar.)

NOTE: Applicants must be residents of the counties in which they wish to serve. Appointment to be made in Clarke, Preble and Washington Counties.

DUTIES: The duties as prescribed by statute are:—To make a record of all dogs owned, kept and harbored in their respective counties; patrol their respective counties, and seize and impound all dogs, more than three months of age, found not wearing a valid registration tag, except dogs constantly confined in a registered kennel; investigate all claims for damages to live stock inflicted by dogs; make weekly reports in writing to County Commissioners of all dogs seized, impounded, re-deemed and destroyed and also of claims for damages to live stock inflicted by dogs; issue dog licenses when authorized to do so by their respective county auditors; have full police powers.

QUALIFICATIONS: I. Applicants must give bond to the sum of not less than \$500 nor more than \$2000 to be deposited with the county auditor.

II. Must have a thorough knowledge of the laws dealing with this subject; and

III. Must possess tact and discretion and be physically capable of performing the duties of the position.'

Acting under this section of the Civil Service Bulletin, several residents of Paulding County went to Toledo, Ohio, and took the examination given by such Commission to applicants for the position of dog warden in the various counties of the State. Three residents of this county passed such examination and were certified by the Civil Service Commission to the position of dog warden. The Civil Service Commission has requested the Board of County Commissioners to act promptly and appoint a dog warden for this county from such list.

1. Is it mandatory for the Board of County Commissioners to appoint a dog warden from the list certified by such Commission?

2. Can the dog warden appointed in 1927 continue to act in such capacity for this county?

3. Can the Board of County Commissioners appoint a person to act as dog warden under Section 5652-7 of the General Code, other than the three persons who have been certified as eligible by the State Civil Service Commission?"

An examination of Section 486-8, General Code, relative to the civil service of the state of Ohio and the several counties, villages and school districts thereof, impels the conclusion that the position of county dog warden is within the competitive classified service of the State of Ohio, and it follows from the provisions of Section 486-10, General Code, that all applicants for positions within the competitive classified service are subject to an examination.

Section 5652-7, General Code, reads in part as follows:

"County commisoiners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.

* * * * *

Section 486-13, General Code, provides in part as follows:

"* * * Appointments to all positions in the classified service, as herein defined, that are not filled by promotion, transfer or reduction, as provided for in this act and the rules of the commission prescribed thereunder, shall be made only from those persons whose names are certified to the appointing officer in accordance with the provisions of this act, and no employment, except as provided in this act, shall be otherwise given in the classified service of this state or any political subdivision thereof. The appointing officer shall notify the commission of such position to be filled and shall fill such position by appointment of one of the three persons certified to him as provided in this act. (G. C. §§ 486-10 and 486-13).

* * * * *

Since the office of county dog warden is within the competitive classified service, it follows from the terms of Section 5652-7, General Code, and under the circumstances set forth in your communication, that it is the mandatory duty of the board of county commissioners to appoint a dog warden from the list certified by the civil service commission for such position.

Coming to your second question relative to whether or not the dog warden appointed in 1927 may continue to act in such capacity for your county, an examination of the history of Section 5652-7, General Code, discloses that prior to its last amendment by the 87th General Assembly, the duties of dog warden devolved upon the sheriffs of the several counties. However, an act found in 112 Ohio Laws, 347, which was passed over the Governor's veto, and filed with the Secretary of State May 12th, 1927, contained the provisions above quoted, namely, that the county dog warden should be appointed or employed by the county commissioners.

It is apparent that under the provisions of Section 486-13, General Code, above quoted, since an eligible list has been made for this position, the county commissioners must choose a person from such list to fill such position, and, consequently, the dog warden appointed in 1927 cannot continue to act in such capacity after such appointment has been made.

Coming now to your third inquiry, I have previously pointed out the pertinent provisions of Section 486-13, General Code, relative to appointments within the classified service of the state. An examination of that and other pertinent sections of the General Code discloses that where an active eligible list has been certified by the State Civil Service Commission for a position within the competitive classified service, appointment to such position must be made from such list.

Respectfully,

GILBERT BETTMAN,

Attorney General.