

In view of the foregoing, the conclusion is in my judgment inescapable that so long as the hauling of supplies or products to or from farms other than those owned, controlled or operated by the licensee does not comprise more than 25 % of the farm use to which the truck is exclusively devoted, the license tax provided by Section 6292, supra, is applicable.

It should be observed in conclusion that the statute makes no mention of whether there is or is not any compensation paid for such farm use as is devoted to hauling for farms other than the farm or farms owned, controlled or operated by the licensee, and therefore the matter of whether such farm use is or is not done for compensation, or who pays the compensation, if any, has no bearing on the question.

Specifically answering your question, it is my opinion that :

1. By virtue of the provisions of Section 6292 of the General Code, a farm truck in order to be classified as such must be used exclusively in transporting from the farm of products of the farm and to the farm of supplies necessary in the use and operation of the farm.

2. The transportation of commercial fertilizer to a farm is a "farm use" within the meaning of the term as used in such Section 6292, General Code.

3. A farm truck may be licensed under the schedule provided by Section 6292, General Code, when such truck is used for transporting such fertilizer to the farm or farms owned, controlled or operated by the licensee, as well as to other farms, providing 75 % of the farm use of such truck is for the farm or farms owned, controlled or operated by the licensee.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2427.

PUBLIC EMPLOYEES RETIREMENT SYSTEM—CONSERVANCY EMPLOYEE, HEALTH EMPLOYEE, OR PUBLIC LIBRARY EMPLOYEE MEMBER CANNOT BECOME CANDIDATE FOR COUNTY OR MUNICIPAL EMPLOYEE MEMBER OF SAID SYSTEM—NEITHER MAY SAID EMPLOYEES VOTE FOR COUNTY EMPLOYEE MEMBER OR MUNICIPAL EMPLOYEE MEMBER OF PUBLIC EMPLOYEES RETIREMENT BOARD.

*SYLLABUS:*

1. *A conservancy employe, or, a health employe, or a public library employe, who is a member of the Public Employes Retirement System*

*cannot become a candidate for either the county employe member, or, the municipal employe member of the Public Employes Retirement Board.*

*2. Conservancy employes or public library employes or health employes who are members of the Public Employes Retirement System cannot vote for either the county employe member, or the municipal employe member of the Public Employes Retirement Board.*

COLUMBUS, OHIO, May 10, 1938.

HON. WILSON E. HOGE, *Secretary, Public Employes Retirement System, Columbian Building, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"Section 486-34 of the General Code, as amended by the provisions of Amended House Bill No. 776, defines the membership of the Public Employes Retirement Board. It states that one of the members of such Board 'shall be a county employe member of the retirement system and who shall be elected by ballot by the county employe members of the retirement system from among their number, another of whom shall be a municipal employe member of the retirement system and who shall be elected by ballot by the municipal employe members of the retirement system \* \* \*'"

House Bill 776 was amended by the General Assembly to provide for the inclusion of conservancy district, health district and public library employes and all sections of said bill referring to the membership of the retirement system were amended to include the above employes in addition to the county and municipal employes except Section 486-34 and Section 486-37 which sections deal with the membership of the Retirement Board. Section 3 of the above bill defines separately the various classes of employes.

The question now arises as to whether health district, conservancy district, and public library employes can become candidates for board membership or cast votes in the approaching election.

Inasmuch as this Board has informed the various local subdivisions that official ballots will be distributed on or about May 6th, we will appreciate your immediate attention to this matter. We suggest that in order to promote early consideration that your reply be in the form of an informal opinion. The necessity for immediate action comes from the fact that contracts for

the printing of the ballots cannot be let until we have an answer to the above question.”

The provisions contained in Sections 486-33c, 486-34, and 486-37, General Code, are pertinent to your inquiry. Section 486-33c, *supra*, provides in part, as follows:

“For the purposes of this act, ‘county or municipal employes’ shall mean any person holding a county or municipal office, not elective, in the state of Ohio, and/or paid in full or in part by any county or municipality in any capacity whatsoever. ‘Park district employe’ shall mean any person holding a park district office not elective in the state of Ohio or any person in the employ of a park district and/or paid in full or in part by a park district created by law. ‘Conservancy employe’ shall mean any person holding a conservancy office not elective in the state of Ohio and/or paid in full or in part by a conservancy district. ‘Health employe’ shall mean any person holding a health office not elective, in the state of Ohio and/or paid in full or in part by any county, municipal or other health district created by law. ‘Public library employe’ shall mean any person holding a position in a public library, in the state of Ohio, and/or paid in full or in part by the board of trustees of a public library. \* \* \* ”

Section 486-34, General Code, reads as follows:

“The general administration and management of the public employes’ retirement system and the making effective of the provisions of this act are hereby vested in a board to be known as the ‘public employes’ retirement board,’ which shall consist of six members as follows: The attorney general. The auditor of state. The chairman of the civil service commission, and three other members known as employe members, one of whom shall be a state employe member of the retirement system and who shall be elected by ballot by the state employe members of the retirement system from among their number, another of whom shall be a county employe member of the retirement system and who shall be elected by ballot by the county employe members of the retirement system from among their number, and another of whom shall be a municipal employe of the retirement system and who shall be elected by ballot by the municipal employe members of the retirement system from among their number, in a manner to be approved by the retirement board.”

Section 486-37, General Code, provides in part, as follows:

“The first election for the county employe member of the retirement board shall be held immediately following the passage of this act for a term ending December 31, 1939, and thereafter the elections for the county employe member of the retirement board shall be held on the first Monday in October in each odd numbered year, for a term of two years starting on the first day of January following such election. The term of office of the second and most recently elected state employe member of the state employes retirement board shall terminate upon the election of the county member of the public employes retirement board. The first election for the municipal employe member of the retirement board shall be held immediately after the passage of this act, for a term to end December 31, 1938. \* \* \*

Any member of the retirement system shall be eligible for election as a member of the retirement board and the name of any state employe member who shall be nominated by a petition signed by at least one hundred state employe members of the retirement system and any county employe members who shall be nominated by a petition signed by at least one hundred county employe members of the retirement system and any municipal employe member who shall be nominated by a petition signed by at least one hundred municipal employe members of the retirement system, shall be placed upon the ballots by the retirement board as a regular candidate \* \* \*.”

I assume the election referred to in your communication is the “first election for the county employe member” and the “municipal employe member” that is to be held immediately after the passage of this act, as provided for in Section 486-37, supra.

It is to be observed that by the provisions of Sections 486-34 and 486-37, supra;—that, any county member of the Public Employes Retirement System is eligible to become a candidate for election as the county member of the retirement board by being nominated by a petition signed by at least one hundred employe members of the retirement system, and such candidate must be elected by ballots that are cast only by county employe members of the retirement system; and that, any municipal member of the Public Employes Retirement System is eligible to become a candidate for election as the municipal member of the retirement board by being nominated by a petition signed by at least one hundred municipal employe members of the retirement system, and such candidate must be elected by ballots that are cast only by municipal employe members of

the retirement system. In other words, Sections 486-34 and 486-37, *supra*, clearly and specifically provide that only a county employe member of the Public Employes Retirement System can be a candidate for the county employe member of the retirement board and voting for such county employe member is strictly limited to county employe members of the Public Employes Retirement System; and that, only a municipal employe member of the Public Employes Retirement System can be a candidate for the municipal employe member of the retirement board, and voting for such municipal employe member is strictly limited to municipal employe members of the Public Employes Retirement System.

Therefore, whether or not a "conservancy employe" or "public library employe" or a "health employe" may become a candidate for either the county employe member or the municipal employe member of the Public Employes Retirement System Board, and, whether or not conservancy employes or public library employes or health employes may vote for either the county employe member or the municipal employe member of the Public Employes Retirement System Board, is wholly dependent upon whether or not conservancy employes or public library employes or health employes can be classified as either "county or municipal employes."

It is to be observed that by the provisions of Section 486-33c, *supra*, in order for one to be a county or municipal employe, that person must hold a county or municipal office (not elective) and must be paid in full or in part by a county or a municipality.

By the provisions of Section 486-33c, *supra*, a "conservancy employe" is defined as follows:

"For the purposes of this act \* \* \* 'Conservancy employe' shall mean any person holding a conservancy office not elective in the state of Ohio and/or paid in full or in part by a conservancy district. \* \* \*"

It is clear that by virtue of this definition in order for a person to be classified as a "conservancy employe" that person must hold a conservancy office (not elective) and be paid in part or in full by a conservancy district.

Sections 6828-1, *et seq.*, of the General Code constitute the Conservancy Act of Ohio, and provide for the creation of conservancy districts.

Section 6828-6, General Code, provides that upon the decree by the court declaring a district organized as a conservancy district and the giving of a corporate name to such district, "thereupon the district shall be a political subdivision of the state of Ohio, a body corporate with all the powers of a corporation," etc.

From the foregoing it is clear that by the provisions of Sections 486-33c, and 6828-6, General Code, it must be said that, a conservancy district employe means any person holding a conservancy office (not elective) and paid in full or in part by a certain particular conservancy district which is within itself a separate and distinct political subdivision; and that therefore, a conservancy employe cannot be said to be a person holding a county or municipal office (not elective) and paid in full or in part by any county or municipality. A county, municipality, and conservancy district each within itself is recognized as a separate and distinct political subdivision.

By the same reasoning a like conclusion must be reached in regard to a public library employe. Section 486-33c, supra, defines "public library employe" as a person holding a position in a public library and paid in full or in part by the board of trustees of a public library. It would be impossible for a person coming within both of these requirements to also be a person holding a county or municipal office and be paid in full or in part by a county or municipality.

A health employe is defined in Section 486-33c, supra, as "any person holding a health office not elective, in the state of Ohio, and/or paid in full or in part by any county, municipal or health district created by law."

It must first be observed that the same language is used in the last half of the definition for a "county or municipal employe" as for a "health employe," that is, paid in full or in part by any county or municipality. Therefore, whether or not a health employe may be classified as a county or municipal employe is wholly dependent upon whether or not a health employe can be said to hold a "county or municipal office, not elective, in the State of Ohio."

In an opinion rendered by me on October 19, 1937, and numbered 1328, I reached the conclusion that employes of a city health district and a general health district were employes of political subdivisions separate and distinct from the cities, villages and townships with which they are territorially identical; and that, they must be classified as employes of the political subdivision under which they serve. Following this reasoning "health employes" cannot be considered as county or municipal employes. In the body of the opinion, I stated as follows:

"In the creation of city health districts and general health districts it seems perfectly clear that the legislature intended to bring into existence two new political subdivisions, separate and distinct from the cities, villages and townships with which they are coterminous. This difference in political entities is announced in an opinion appearing in Opinions of the Attorney General for 1933, Vol. III, page 1679, as follows:

'It clearly appears from the terms of Section 1261-16, General Code, supra, that the health districts thereby created are separate and distinct political subdivisions from other subdivisions of the state. A city health district and a city, although they embrace precisely the same territory, are separate entities. So also are general health districts and counties.'

A further distinction between health district and other political subdivisions is made in the case of *State ex rel. Hanna vs. Spittler*, 47 O. App., 144, the second branch of the syllabus of which reads as follows:

'2. Board of health of city health district is governmental agency separate and distinct from municipality and not subject to its jurisdiction (Sections 1261-16, 1261-30 and 4413, General Code.)'

As a logical consequence of the separation of health districts from the other political subdivisions of the state, the courts have announced that the employes of a city health district are not municipal employes. In the case of *Board of Health vs. State, ex rel.*, 40 O. App., 77, at page 83, it is stated:

'The fact that a city through taxation must pay employes of its district board of health cannot make them municipal employes, for a city must pay its portion of the cost of its health administration, and it is not inequitable that it should pay for that from which it in the first instance receives the most direct benefit; \* \* \*'

Another case differentiating the status of an employe of a board of health of a city health district from a municipal employe is *State, ex rel., R. W. Burns, vs. Christopher Clark et al.*, 30 N. P. (N. S.), 243, in which case it is held:

'A sanitary policeman and plumbing inspector is not an employe of the city but an employe of the Board of Health of the city, which is a distinct political subdivision of the state made so by the Hughes and Griswold (108 Ohio Laws 236, 1085) Acts independent of the city, and the Board has absolute control over its employes and may summarily discharge them.'

Inasmuch as city health districts and general health districts are political subdivisions separate and distinct from the cities, villages and townships with which they are territorially identical, and since the employes of these health districts cannot be classified as municipal, village or township employes, it necessarily follows that they are employes of the political subdivisions under which they serve. In other words, the persons herein considered must be classified as 'City Health District Employes' and 'Gen-

eral Health District Employees.' This classification is indirectly announced in the case of *State ex rel. R. W. Burns vs. Christopher Clark et al.*, supra, in that the court held that the sanitary policeman and plumbing inspector was an employe of the board of health which is a distinct political subdivision of the state. It is my opinion, therefore, that city health district employes and general health district employes enjoy precisely the status that these terms mean and consequently cannot be classified as state employes."

It now becomes important to determine what effect the defining of "county and municipal employes" and "health employe" by the Legislature in Section 486-33c, supra, has on this said former conclusion that health employes cannot be classified as county and municipal employes.

In Section 486-33c, supra, the definition of "county or municipal employes" contains two requirements: (1) the holding of a county or municipal office, not elective, and, (2) "paid in full or in part by any county or municipality in any capacity whatsoever". The two requirements are connected by the conjunctions "and/or". It is obvious that if in construing and interpreting the definition of "county and municipal employes" the conjunction "and" may be disregarded and effect be given to the word "or", only one of the two requirements is necessary in order for one to be a county or municipal employe. If this were correct then a "health employe" being paid in full or in part by a county or municipality could be termed as a county or municipal employe. However, such a construction and interpretation would render the definition of "health employe" in Section 486-33c, supra, superfluous. It cannot be presumed that when the Legislature included within a statute a definition of a particular class of employes that it intended that such employes come within the terms of another definition in the same statute and thereby render the effect of the definition of that particular class of employes nugatory.

By reason of all the foregoing, it must be said that a conservancy employe, or, a health employe, or, a public library employe, cannot be termed a county or municipal employe, and therefore a conservancy employe, or, a health employe, or, a public library employe, who is a member of the Public Employes Retirement System cannot become a candidate for either the county employe member, or, the municipal employe member of the Public Employes Retirement Board, and conservancy employes, or, public library employes, or, health employes, who are members of the Public Employes Retirement System cannot vote for either the county employe member or, the municipal employe member of the Public Employes Retirement Board.

I am not unmindful of the fact that this conclusion deprives a con-



servancy employe, a health employe, and a public library employe of the privilege of becoming a candidate for a member of the Public Employes Retirement Board, and also in taking part in the selection of the members who are to represent the conservancy, health and public library employes on such board. However, it is not within the province of the Attorney General to interpret or construe statutes contrary to the plain and express language contained in the statutes. It must be presumed that since the legislature clearly and specifically provided that only a county employe member of the Public Employes Retirement System can become a candidate for the county employe member of the retirement board and only county employe members of the Public Employes Retirement System can vote for such county employe member on the board, and made the same provisions in regard to the municipal employe member, that the lawmakers intended such limitations. If not, the remedy is lodged in the legislature to change by amendment, or otherwise. As stated in the case of *Slingluff et al. vs. Weaver, et al.*, 66 O. S., page 627:

“Courts cannot correct supposed errors, omissions or defects in legislation.”

To the same effect is the case of *Ohio Savings & Trust Company vs. Schneider, et al.*, 25 Ohio Appellate, 259, wherein it was stated:

“Courts cannot read into a statute that which does not appear therein; it being presumed that lawmakers placed in the statute all that was intended.”

It is impossible to permit a group of employes to become candidates or to vote when the language in the statutes clearly sets forth who may be candidates and who may vote, and such language is so plain and unambiguous that it cannot include any other groups of employes than those mentioned. The well recognized principle of “*expressio unius est exclusio alterius*” has direct application herein. This rule of law is well expressed in the following case: *Stubenville vs. Reiner*, 7 Ohio Law Abstract, page 342, as follows:

“Mention in statute, of one class or several classes of persons, implies exclusion of all others.”

Therefore, in specific answer to your question it is my opinion that a conservancy employe, or, a health employe, or, a public library employe, who is a member of the Public Employes Retirement System cannot become a candidate for either the county employe member, or, the municipal

employe member of the Public Employes Retirement Board, and conservancy employes or public library employes or health employes who are members of the Public Employes Retirement System can not vote for either the county employe member or, the municipal employe member of the Public Employes Retirement Board.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2428.

APPROVAL—BONDS, VILLAGE OF MIDDLEBURG HEIGHTS,  
CUYAHOGA COUNTY, OHIO, \$100,000.00, PART OF TWO  
ISSUES DATED JULY 1, 1937.

COLUMBUS, OHIO, May 10, 1938.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Village of Middleburg Heights,  
Cuyahoga County, Ohio, \$100,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. There bonds comprise part of two issues of street improvement refunding bonds dated July 1, 1937, bearing interest at the rate of 2½ to 5%, being Series 1 in the aggregate amount of \$80,690.26 and Series 2 in the aggregate amount of \$248,583.35.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*