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1. CIVIL SERVICE, CLASSIFIED — DEPARTMENT OF PUBLIC WELFARE — CHIEFS, DIVISIONS BUSINESS ADMINISTRATION, CORRECTION, MENTAL DISEASES, SOCIAL ADMINISTRATION — SUCH CHIEFS MAY NOT BE APPOINTED IN UNCLASSIFIED CIVIL SERVICE — SECTION 486-8 (a)8 GENERAL CODE.
2. REMOVAL FOR CAUSE, SUCH CHIEFS, GOVERNED BY SECTION 486-17a GENERAL CODE.

SYLLABUS:

1. The positions of chiefs of the divisions of business administration, correction, mental diseases and social administration in the Department of Public Welfare are in the classified civil service and appointments thereto may not be made in the unclassified civil service under favor of Section 486-8 (a)8, General Code.

2. The removal for cause of the chiefs of said divisions in the Department of Public Welfare is governed by Section 486-17a, General Code.

Columbus, Ohio, February 14, 1942

Hon. Charles L. Sherwood, Director, Department of Public Welfare,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“Under the provisions of amended S. B. No. 133, passed by both houses of the General Assembly and signed by the Governor on April 23, 1941, there were certain divisions set up in the Department of Public Welfare. Under Section 7 of this bill, it provides for the appointing of a chief of the four divisions created by the Act, to be appointed as follows:

‘The Director shall appoint the chief of each division who shall be in the classified service of the state.’

Following this there is a provision that Paragraph 2 of Section 486-14 of the General Code may be invoked in the appointing of such a chief. The question has been raised as to whether or not such chiefs, however, appointed in the classified service, are subject to the exemptions authorized under 486-8 Paragraph A, Sub-Paragraph 8, and further can persons holding those positions be legally removed in any other way than by the regular procedure prescribed by law for the removal of persons in the classified service.”

Section 10 of Article XV of the Constitution of Ohio contains provisions for the civil service of this state as follows:

“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.”

Pursuant to this constitutional mandate, the Legislature enacted the so-called Civil Service Act (Section 486-1, et seq., General Code,) wherein provisions were made for the operation and enforcement of the constitutional section above quoted. In Section 486-8, General Code, the Legislature divided the state civil service into the following classes and sub-classes:

“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.

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. * * *

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two

secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer. * * *

(b) The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service to be designated as the competitive class and the unskilled labor class.

1. 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. * * *

2. The unskilled labor class shall include ordinary unskilled laborers. * * *"

With these preliminaries in mind, we turn to your first question as to whether or not the positions of chiefs of the divisions of business administration, correction, mental diseases and social administration established in the Department of Public Welfare by Amended Senate Bill No. 133, Ninety-Fourth General Assembly, may be placed by you, as a principal appointive executive officer, in the unclassified civil service under the provisions of Section 486-8 (a)8, supra. Said Amended Senate Bill No. 133 was codified as Sections 154-60, 154-60a through 154-60h, inclusive, General Code. By its terms the four divisions above referred to were established in the Department of Public Welfare and a chief, responsible to the Director, was placed at the head of each. Concerning the appointments of such chiefs, Section 154-60f provides:

" * * * The director shall appoint the chief of each division, who shall be in the *classified* civil service of the state. The chief of each division shall be a person who has had special training and experience in the type of work with the performance of which the division is charged. If and when the director shall certify that any such position can best be filled under the provisions of paragraph 2 of section 486-14 of the General Code or without regard to residence of the appointee, the civil service commission shall be governed by such certification. * * *"

(Emphasis mine.)

This section specifically places the positions of chiefs of divisions in the classified civil service of the state. Being within such service

appointments thereto may be made from an eligible list after competitive examination as provided in Section 486-13, General Code, or without competition in the manner set forth in paragraph 2 of Section 486-14, General Code, as follows:

“Positions in the classified service may be filled without competition as follows: * * *

2. In case of a vacancy in a position in the classified service where peculiar or exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by a selection of some designated person of high and recognized attainments in such qualities, the commission may suspend the provisions of the statute requiring competition in such case, but no suspension shall be general in its application to such place, and all such cases of suspension shall be reported in the annual report of the commission with the reasons for the same.”

The discretion of the Civil Service Commission with respect to appointments of division chiefs pursuant to this section has been limited. By the express terms of Section 154-60f, supra, if and when the Director of the Department of Public Welfare certifies that the position of division chief can best be filled without competition, under the provisions of paragraph 2 of Section 486-14, supra, “the Civil Service Commission shall be governed by such certification.” Of course, it might be pointed out that provisional appointments to the positions in question may be made in the manner prescribed in paragraph 1 of Section 486-14, General Code. However, for the purposes of this opinion I do not deem it necessary to discuss further this type of appointment. Irrespective of whether the division chiefs are appointed from an eligible list or as provided in paragraph 2 of Section 486-14, supra, they are in the classified civil service.

The question then arises: May the position of a division chief who has been appointed in the classified civil service be placed in the unclassified civil service as an “assistant” by force of Section 486-8(a)8, supra? In connection therewith, your attention is directed to the case of State, ex rel. Myers v. Blake, 121 O.S. 511. The facts of the case reveal that relator occupied the position of chief of the Division of Boiler Inspection in the Department of Industrial Relations, having been appointed thereto from an eligible list created after competitive examination.

Some years after said appointment, the respondent, the director of the Department of Industrial Relations, designated said position to be in the unclassified service under authority of Section 486-8(a)8, supra, and summarily discharged relator. Whereupon relator sought reinstatement by an action in mandamus. In denying the writ the court held that the chief of the Division of Boiler Inspection was an "assistant" within the meaning of Section 486-8(a)8, supra. At page 516 of the percuriam opinion it was said:

"The office of chief of the division of boiler inspection being thus within the purview of the department of industrial relations, he was clearly within its jurisdiction and a subordinate of the director thereof. As such chief of the division of boiler inspection, he was an 'assistant' to the head of the department, as an agent through whom the duties and purposes of the department were accomplished. The subordinate of one in an official position is necessarily an assistant, looking toward the accomplishment of the common object. We think the term was so used by the Legislature in paragraph (a), sub-section 8, Section 486-8, General Code."

Upon examination of the duties of the division chiefs of the Department of Public Welfare, it appears to me that the language of the court above quoted with respect to the chief of the Division of Boiler Inspection is applicable to the positions about which you inquire. Nevertheless, it is my view that the Blake case, supra, is not controlling in our situation. It is a well settled rule of statutory construction and interpretation that all provisions of a statute should be given effect whenever possible. In this regard it is said in 37 O.Jur. at page 611, as follows:

"It is a general principle, which is embodied in the maxim *ut res magis valeat quam pereat*, that the courts should, if reasonably possible, so construe a statute, or a section thereof, as to give it effect. In order to comply with these principles, the courts should strive to give effect not only to the statute as a whole, but to the several parts as well. The presumption is that every word in a statute is designated to have some effect not only to the statute as a whole, but to the several parts as well. The presumption is that every word in a statute is designed to have some effect. Therefore, an attempt should be made to give effect to each and every word, phrase, clause and provision. Sometimes, however, it is not possible, in arriving at the meaning of statutes, to give force and effect to every word and phrase used. That an act shall be construed so as to give every line effect is of less importance than that it shall not be so construed as to be contrary to what, from the act itself, appears to have been the legislative intent."

By the use of the word "classified" in Section 154-60f, supra, it would seem that the Legislature evidenced a clear intent that the positions in question should remain at all times in the classified civil service. In the Blake case the court was not confronted with a statute wherein the word "classified" appeared. The position of chief of the Division of Boiler Inspection was in the classified civil service not by reason of any express statute dealing with that position, but rather it was so considered by reason of the general provisions of the Civil Service Act. Perhaps it might be said that the word "classified" was inserted in Section 154-60f, supra, out of an abundance of precaution. To give force and effect thereto, it is my view that it was the legislative intent to keep the division chiefs of your department in the classified service and to prohibit their positions from being exempted and placed in the unclassified service under authority of Section 486-8(a)8, supra. A different interpretation would render the word "classified" in Section 154-60f meaningless; in my opinion that word is controlling.

Coming now to your second question, your attention is directed to Section 486-17a, General Code, which governs the removal of officers or employes in the classified civil service. Said section provides in part as follows:

"The tenure of every officer, employe or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or non-feasance in office.

In all cases of removal the appointing authority shall furnish such employe or subordinate with a copy of the order of removal and his reasons for the same, and give such officer, employe or subordinate a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employe or subordinate shall be filed with the commission. Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission as the case may be, within ten days from and after the date of such removal, in which event the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty

days from and after its filing with the commission, and it may affirm, disaffirm or modify the judgment of the appointing authority, and the commission's decision shall be final; * * *."

Having concluded that the positions of the several chiefs of divisions in your department are within the classified civil service, it follows that the incumbents thereof may be removed for cause only in the manner outlined in the above section.

Specifically answering your inquiries, it is my opinion that:

1. The positions of chiefs of the divisions of business administration, correction, mental diseases and social administration in the Department of Public Welfare are in the classified civil service and appointments thereto may not be made in the unclassified civil service under favor of Section 486-8(a)8, supra.

2. The removal for cause of the chiefs of said divisions in the Department of Public Welfare is governed by Section 486-17a, supra.

Respectfully,

THOMAS J. HERBERT
Attorney General.