

4944

CIVIL SERVICE COMMISSION — ELIGIBILITY OF PERSONS
CERTIFIED — RESIDENCE QUALIFICATIONS — FOREIGN
COUNTY — POWERS, APPOINTING OFFICER.

SYLLABUS:

The question of eligibility for appointment of persons on a certification made by the Civil Service Commission for appointment to a position discussed.

Columbus, Ohio, March 21, 1942.

Hon. Leo J. Scanlon, Prosecuting Attorney,
Bucyrus, Ohio.

Dear Sir:

This will acknowledge your recent request for my opinion, which is as follows:

“On November 13, 1941, the State Civil Service Commission of Ohio issued a notice for a competitive examination to be held at the Court House, in Bucyrus, Ohio, Tuesday, December 9, 1941, at 9:00 o'clock A. M. for the position of Superintendent of the Crawford County Children's Home, and also matron of the Crawford County Children's Home.

At the request of the Crawford County Children's Home Board of Trustees, this examination was restricted as follows, all of which appears in the notice: *‘These examinations are open only to qualified residents of Crawford County.’*

(Underscoring the writer's.)

One Mr. X filed an application and took the examination, and subsequently was certified by the State Civil Service Commission as high or No. 1 man. The question has now arisen as to whether or not Mr. X at the time of the taking of the examination was a resident of Crawford County, Ohio, so as to conform with the restriction which opened the examination only to qualified residents of Crawford County, Ohio.

Mr. X lived in Galion, in this county, but in September, 1941, moved to Morrow County into a home which he had purchased there. On November 5, 1941, Mr. X voted at the election held in the sub-division of Morrow County where he resided, and continued to live in said sub-division in Morrow County, Ohio, until January 28, 1942, when he and his wife rented furnished rooms in Galion, Ohio, and from that time on made their home in Galion, Crawford County, Ohio.

Question 1. Under the facts stated above what was Mr. X's place of residence as of December 9, 1941?

Question 2. Under the facts stated above was Mr. X qualified to take the examination held December 9, 1941?

Question 3. If Mr. X was not a resident of Crawford County, on December 9, 1941, would he be eligible for appointment to Superintendent of the Children's Home if the appointment was made after January 28, 1942, when he returned to live in Galion, Crawford County, Ohio?"

Additional facts furnished this office which bear on your question are these: Mr. X purchased the house in Morrow County for the purpose of remodeling it and selling it at a profit. He declares that it was never his intention to abandon Galion as his home and in proof cites the fact that he advertised the house in Morrow County for sale upon completion of the remodeling of the house, such advertising being prior to the time he actually returned to Galion.

The qualification of residence in Crawford County attached to the civil service examination in question by the Civil Service Commission is authorized by Section 486-10, General Code. The language of that section so authorizing such conditions as is follows:

"All applicants for positions and places in the classified service shall be subject to examination which shall be public, and open to all, within certain limitations, to be determined by the commission, as to citizenship, residence, age, sex, experience, health, habit and moral character; * * *."

It is important to note at the outset of this discussion that while entrance to the examination was made by the Civil Service Commission dependent upon residence in Crawford County, the Civil Service Commission did admit Mr. X to the examination and subsequently did place him first upon the list of eligibles certified for appointment to the position of superintendent of the Crawford County Children's Home.

Under the index title "residence," in 54 C.J. 705, I find the following discussion:

"An ambiguous, elastic, flexible, or relative term, which, notwithstanding numerous definitions are to be found in the books, is difficult of precise definition, as it has no fixed meaning applicable alike to all cases, but instead is used in different

and various senses and has a great variety of meanings and significations, because its meaning is variously shaded according to the variant conditions of its application. Also, its meaning often depends upon the subject matter and connection in which it is used, and the sense in which it should be used is controlled by reference to the object; hence it may be given a restricted or enlarged meaning, considering the connection in which it is used."

In examining the many various attempted specific definitions of "residence," the one most repeated and often used is "the place adopted by a person as his place of habitation and to which, whenever he is absent, he has the intention of returning."

In Field's Civil Service Law, at page 81, the following statement with regard to the meaning of "residence" in its application to civil service law is found:

"The meaning of the term residence is usually undefined by statute; its definition has been filled in largely by administrative and judicial decision. Since civil service law as such provides no rules for determining the meaning of residence, resort must be had to the general law of citizenship and residence. There is no simple and single rule for determining whether a person has been a bona fide resident of a state, let us say, for six months preceding the date of examination. The exercise of his right to vote is one factor that is considered; the place where he actually lived in a physical sense, if he did live in any one place, is another consideration; the repeated return to a place from travels to distant parts may also be given weight; the place he announced and acted upon as his home may also be taken into account. But no one of these factors will be conclusive when taken alone. In the last instance, the court tries to find out what the person intended as to his place of residence, looking at such facts as those enumerated, and many additional ones, as evidences of that intention."

Having the above statements in mind and examining the facts of the present case, I am of the opinion that it is not possible for me to state categorically and as a matter of law that Mr. X., at the time of the examination, was not a resident of Crawford County and not eligible to compete for the position in question. Particularly is this so in the face of the fact that the Civil Service Commission did admit him to the examination and did later certify him as eligible for appointment. It may not be presumed that the Civil Service Commission acted in disregard of fact and its own condition attached to the examination when it permitted Mr. X to take the examination and certified him as eligible

for appointment. I, therefore, find it impossible, from the facts furnished me, to answer your questions 1 and 2 categorically.

In considering your question No. 3 as to whether or not Mr. X is eligible to appointment to the position, it is necessary to examine specific provisions of the Civil Service Law of this state. Section 486-12, General Code, in substance provides that from the returns of examinations the Civil Service Commission shall rank the applicants, "who are otherwise eligible," in order of their relative excellence as determined from the results of the examinations. The next succeeding section, Section 486-13, General Code, provides that when a vacancy exists in the classified civil service the appointing officer shall notify the commission of that fact and the commission shall certify to the appointing officer for appointment to the vacant position the names of the three persons standing highest on the eligible list. The same section further provides that the appointing officer "shall fill such position by appointment of one of the three persons certified to him."

In view of the above, it would appear that the certification of the three names in the present case is in itself a determination that those persons so certified are eligible to appointment since the Civil Service Commission is the body entrusted by law with the duty of determining eligibility. In Field's Civil Service Law, at page 100, the statement is made that:

"The question of eligibility is to be decided by the civil service commission. It is not within the power of the appointing officer to make that decision."

Therefore, in specific answer to your question it is my opinion that the certification of the name of Mr. X to the appointing officer, in this case the board of trustees of the children's home, is in itself a determination of the eligibility of Mr. X to appointment to the position sought and, consequently, the board of trustees of such children's home should accept such determination by the Civil Service Commission.

Respectfully,

THOMAS J. HERBERT
Attorney General.