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1. BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—DEPUTY INSPECTORS AND SUPERVISORS, STATE EXAMINERS, ASSISTANT STATE EXAMINERS AND OTHER EMPLOYES—SUBJECT TO PROVISIONS OF AMENDED SUBSTITUTE HOUSE BILL 382, 98 GENERAL ASSEMBLY.
2. PROVISIONS OF SECTION 276 G. C. AS TO CLASSIFICATION AND PER DIEM COMPENSATION OF STATE EXAMINERS AND ASSISTANT STATE EXAMINERS AND PROVISIONS OF SECTION 285 G. C. AS TO COMPENSATION OF ASSISTANTS EMPLOYED IN OR ON BEHALF OF BUREAU TO DISCLOSE FACTS CONCERNING ANY MATTER UNDER INVESTIGATION BY BUREAU IN SO FAR AS ASSISTANTS ARE NON-PROFESSIONAL PERSONS, HAVE BEEN SUPERSEDED BY SECTION 486-7a ET SEQ., G. C.
3. CIVIL SERVICE COMMISSION OF OHIO—NO AUTHORITY TO AUTHORIZE PAYMENT OF COMPENSATION OF STATE EXAMINERS OR ASSISTANT STATE EXAMINERS IN THE BUREAU UPON A PER DIEM BASIS.
4. CIVIL SERVICE COMMISSION OF OHIO—WHEN COMPENSATION ON HOURLY BASIS RATE MAY BE PAID—FIXED FORMULA PROPORTIONATE TO MONTHLY RATE FOR CLASS IN WHICH EMPLOYES ASSIGNED.

SYLLABUS:

1. Deputy inspectors and supervisors, state examiners, assistant state examiners and other employes in the Bureau of Inspection and Supervision of Public Offices are subject to the provisions of Amended Substitute House Bill No. 382 of the 98th General Assembly.

2. The provisions of Section 276, General Code, relating to the classification and per diem compensation of state examiners and assistant state examiners and the provisions of Section 285, General Code, relating to the fixing of the compensation of assistants employed in or on behalf of the Bureau of Inspection and Supervision of Public Offices to disclose facts concerning any matter under investigation by said Bureau, in so far as such assistants are non-professional persons, have been superseded by Section 486-7a et seq., General Code.

3. It is not within the authority of the Civil Service Commission of Ohio under any provision of Amended Substitute House Bill No. 382 to authorize the payment of the compensation of state examiners or assistant state examiners in the Bureau of Inspection and Supervision of Public Offices upon a per diem basis.

4. The Civil Service Commission of Ohio may authorize the payment of state examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices to be compensated on the basis of hourly rates upon determining that it is necessary or desirable to compensate such employes on that basis, and upon such determination the hourly rate of such employes is determined by a fixed formula proportionate to the monthly rate for the class in which they are assigned.

Columbus, Ohio, January 9, 1950

State Civil Service Commission of Ohio
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“The Civil Service Commission and the Auditor of State have had discussion with reference to the correct interpretation of H. B. No. 382, enacted by the 98th General Assembly, with respect to its relation to the Bureau of Inspection and Supervision of Public Offices. It was mutually decided that this Commission should request your opinion relative to some of the matters under discussion.

G. C., Sections 274, et seq., provide for the establishment of such Bureau. Section 276 provides for the appointment of state examiners and assistant state examiners, as well as providing for their per diem salary rates. Subsequent sections provide for the authority of such examiners and assistants and the charge back of their salaries to the taxing districts of this state.

While H. B. No. 382 does not specifically exempt such state examiners, or assistants, or other employes in the Bureau from the operation of such act, at the same time it does not specifically, by definite reference to particular existing sections, repeal any of the statutes in reference to such Bureau.

In view of the foregoing, your opinion is respectfully requested concerning the following matters :

1. Are state examiners, assistant state examiners, deputy supervisors, and other employes in such Bureau subject to the provisions of said H. B. No. 382? What provisions, if any, of the existing statutes pertaining to the Bureau, are modified, amended, or repealed by the said House Bill and to what extent?

2. If state examiners, and their assistants in the Bureau are subject to H. B. No. 382, is it within the authority of this Commission to approve classification and payment of such employes on a per diem basis, or on the basis of a predetermined number of hours corresponding to a per diem rate?"

Amended Substitute House Bill No. 382 of the 98th General Assembly, approved by the Governor on July 28, 1949, amended numerous sections of the General Code and enacted new sections which have been codified as Sections 486-7a, 486-7b, 486-7c, 486-7d and 486-7e of the General Code. These new sections of the Code provide for the classification of positions, offices and employments in the state service and the establishment of pay ranges for each job classification.

Section 486-7a, General Code, provides in part as follows:

"All positions, offices and employments in the state service, except those hereinafter excluded, are classified hereby as follows:

* * * The provisions of this act shall not apply to the following persons, positions, offices and employments:

- (1) Elected officials;
- (2) Legislative employes and employes of the legislative reference bureau; employes in the office of the governor; and employes of the supreme court;
- (3) All commissioned and non-commissioned officers and enlisted men in the military service of the state, including military appointments in the office of the adjutant general;
- (4) The following appointive state officers and officials: adjutant general and the assistant adjutant general; director of the department of finance; director of the department of commerce; director of the department of highways; director of the department of public works; director of the department of agriculture; director of the department of health; director of the department of industrial relations; director of the department of education; director of the department of public welfare; administrator of the bureau of unemployment compensation; members of the industrial commission; members of the public utilities commission; commissioner of the department of taxation; director of the department of liquor control; the superintendent of the Ohio soldiers' and sailors' home and the Ohio soldiers' and sailors' orphans' home; the director of aviation; members of the civil service commission; and members of all boards, commissions, and councils.

(5) All officers and employes of state supported colleges and universities and the administrative and research staffs of the agricultural experiment station; provided, however, that with respect to the non-teaching staff such educational institutions shall conform as closely as possible with the classifications and salary scales herein provided."

Section 486-7b, General Code, provides in part as follows:

"All employes working for the state of Ohio or any of the several departments, commissions, bureaus, boards or councils of the state of Ohio, except those specifically excluded in section 486-7a of the General Code, shall be paid a salary or wage in accordance with one of the following pay-ranges, set up in monthly amounts, to-wit: * * *"

From the foregoing provisions of Amended Substitute House Bill No. 382 it becomes eminently clear that all employes of the State of Ohio, except those specifically excluded in Section 486-7a, become subject to the classification and pay range provisions of said House Bill, unless by a subsequent enactment they have been expressly or impliedly removed from said provisions.

It is observed that the employments excluded by Section 486-7a do not include employes of the Bureau of Inspection and Supervision of Public Offices. An examination of Section 274, et seq., General Code, relating to said Bureau, discloses that all of said sections, in either their original or amended form, were enacted prior to the enactment of said Amended Substitute House Bill No. 382. It is a general rule of statutory construction in so far as two statutes are irreconcilable, effect must be given to the one which is the later. *State, ex rel. Guilbert, Auditor v. Holliday, Auditor of Franklin County*, 63 O. S. 165. It therefore follows that all provisions of the statutes relating to the Bureau of Inspection and Supervision of Public Offices which are irreconcilable or in conflict with the provisions of said House Bill have been superseded by the latter.

From the foregoing, there can be no doubt that deputy inspectors and supervisors and other employes in said Bureau whose compensation is not charged back to the taxing district or districts in accordance with Sections 287 and 288, General Code, are subject to the provisions of said Amended Substitute House Bill No. 382.

From the context of your letter of inquiry, it appears that you are primarily concerned about the status of the state examiners and assistant

state examiners, whose positions, per diem compensation and traveling expenses are provided for by Section 276, General Code, which compensation and expense is thereafter charged back to the taxing districts in accordance with said Sections 287 and 288, General Code. As hereinabove observed, if these state examiners and assistant state examiners are employes of the State of Ohio it would follow that they are likewise subject to the provisions of said House Bill.

Upon reading Sections 287 and 288, General Code, it will be seen that the amounts chargeable to the taxing districts as well as the balance which is apportioned to the counties, are collected by the Auditor of State and paid into the state treasury to the credit of the public audit expense fund. From this fund appropriations are made by the General Assembly and the compensation of the examiners is thus paid. The fact that the State thus reimburses itself for the compensation of these examiners in no way affects their status as public employes or as employes of the State. Their appointment by the Auditor of state is expressly authorized. They have repeatedly been held to be public employes within the provisions of the civil service laws and within the classified service of the State. See 1914 Opinions of the Attorney General, page 734; 1915 Opinions of the Attorney General, page 78; 1939 Opinions of the Attorney General, page 1219, and 1947 Opinions of the Attorney General, page 575. The first branch of the syllabus in the last cited Opinions of the Attorney General, which is Opinion No. 2419 for the year 1947, reads as follows:

“1. State examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices are state employes and are included within the provisions of Section 486-17c, General Code, providing sick leave with pay for state employes.”

In view of the foregoing your first question must be answered in the affirmative.

With respect to your second question relative to the provisions of the existing statutes pertaining to the Bureau which may have been modified, amended or repealed, your attention is called to the fact that the newly enacted Section 486-7a et seq., General Code, relate to the classification of all positions, offices and employments and provide for the standardization of the salaries and wages of all such employes of the State within prescribed pay ranges. All provisions of the existing statutes pertaining

to the Bureau which deal with either the classification or salaries of employes therein would necessarily be repealed by implication and superseded by said Section 486-7a et seq. An examination of the existing statutes pertaining to the Bureau of Inspection and Supervision of Public Offices reveals that Section 276, General Code, provides for the classification and per diem compensation of state examiners and assistant state examiners. Such examination further reveals that Section 285, General Code, provides for the employment by the chief inspector, and subject to his approval, by each deputy inspector and each state examiner, of such experts or other assistants as may be necessary to disclose the facts concerning any matter under investigation and fix their compensation. I am apprised of no other sections of the General Code which relate to the classification or salaries of employes of said Bureau. You are advised, therefore, that the provisions of Section 276, General Code, relating to the classification and per diem compensation of state examiners and assistant state examiners have been superseded by Section 486-7a et seq., General Code. With respect to the provisions of Section 285, General Code, relating to the fixing of the compensation of experts or other assistants employed in or on behalf of said Bureau to disclose facts concerning any matter under investigation by it I am inclined to the position that such employes are casual employes and are provided for or excluded by the third to the last paragraph of Section 486-7b, General Code. This paragraph reads as follows:

“In the event employment conditions and the urgency of the work require such action, the commission may, upon the application of a department head, authorize pay rates of not to exceed 50 per cent in excess of the maximum rate of the range established for the class for work of a casual or intermittent nature or on a project basis. Payment at such rates, however shall not be made to the same individual for more than three calendar months in any one calendar year. Any such action shall be subject to the approval of the director of finance as to the availability of funds. However, this act shall not be construed to repeal any present authority of any department or public official to contract with, and fix the compensation of professional persons who may be employed temporarily for work of a casual nature or for work on a project basis.”

If then the employes retained under authority of said Section 285 are professional persons the provisions thereof relating to the fixing of their compensation are not superseded by Amended Substitute House Bill No.

382. If, on the other hand, they are not professional persons they are subject to the provisions of said House Bill.

It is to be noted that Section 276, supra, provides for the payment of mileage and an allowance in lieu of personal maintenance expenses, when away from home or the place of his or her principal assignment. I find no basis for a repeal, implied repeal or amendment of these provisions of said section and this opinion is not intended to include the same within its scope.

In reply to your last question you are advised that I find no authority either directly or indirectly for the compensation on a per diem basis, of state examiners or assistant state examiners in the Bureau of Inspection and Supervision of Public Offices under Amended Substitute House Bill No. 382. That portion of Section 486-7b, quoted above, as well as the schedule contained in Section 486-7c, provide for pay ranges set up in monthly amounts. The only exceptions to this monthly salary compensation appear to be those contained in the second and third paragraphs of Section 486-7b, General Code, which read as follows:

“Where it is necessary or desirable to compensate employes on the basis of hourly rates, such hourly rates shall be proportionate to the monthly rate provided for the class, to be determined by dividing the appropriate monthly rate by the product of $4\frac{1}{3}$ times 40, 44, or 48 hours, whichever is nearest to the established work-week for the class and the department, calculated to the nearest one-half cent.

Part-time employes shall be compensated on an hourly basis for time worked, at hourly rates determined in the manner prescribed above.”

and those contained in the last paragraph of Section 486-7c, which reads as follows:

“Provided, further, that persons who are employed as students-in-training, as internes, or under the terms of formal apprenticeship and training arrangements, persons who are wards or inmates of state institutions and are employed for pay for part-time or limited service in such institutions, shall be compensated at such rates of pay as the department head, with the approval of the commission and the director of finance, may establish.”

It is obvious that the state examiners and assistant state examiners do not fall within the exceptions provided in the last paragraph quoted above nor within the category of part time employes mentioned in the

third paragraph of Section 486-7b, quoted above. The remaining possibility for these employes to be compensated on an hourly basis is that provided in the second paragraph of said Section 486-7b. No method of determining the necessity or desirability of hourly compensation is provided. I am inclined to the opinion that such method was intentionally left to the discretion and judgment of the Civil Service Commission so that it would not be bound by hard and fast rules in making such determination. It would seem that the purpose of such provision could best be served by permitting each such determination to be based upon the attendant circumstances in each particular case. Upon such determination the hourly rate of the employes affected is determined by a fixed formula proportionate to the monthly rate for the class in which they are assigned

It may be urged that the provisions of the seventh paragraph of Section 486-7a, General Code, would authorize the commission to approve classification and payment of such employes on a per diem basis. This paragraph reads as follows :

“The commission shall have the authority to establish, temporarily, new or additional classifications, if such becomes necessary; and, within the appropriations available, to assign such classes or to reassign any classes to the proper pay-range or ranges as set forth in Section 486-7b of the General Code, provided, however, the commission first conducts a public hearing concerning the proposed action after giving at least two weeks’ notice of such hearing by posting notices of the proposed action and of the date, time, and place of the hearing, on the public bulletin board of the commission and by giving such other notice thereof as it deems necessary and desirable. Such temporary classifications and such assignments and reassignments of classes to pay-ranges shall continue only until the adjournment of the next regular session of the General Assembly unless provision otherwise is made by the General Assembly in said session.”

While this provision authorizes the commission to establish new or additional classifications on a temporary basis upon compliance with the prescribed procedure where it becomes necessary, it does not authorize a different method of computation of compensation payable to employes falling within such new or additional classifications. On the contrary, it specifically provides that such classes shall be assigned to the proper pay range or pay ranges provided in other parts of the act. Your attention is called to the fact that the classification of employments is separate and

distinct from the computation of compensation of employes and even though the commission be authorized to approve a different classification for a group of employes under certain circumstances, it would not follow, in the absence of specific authority, that it could approve a different basis of computation of their compensation.

From information furnished by the Bureau of Inspection and Supervision of Public Offices it appears that the services of many specially trained employes may be lost due to pay reductions resulting from the operation of this salary classification act. These employes are full time employes. I fail to see where they may be benefited by changing the basis upon which their compensation is to be computed. The salary and wage ranges in which they are assigned are gross amounts figured on a monthly basis, and if computed for a less period of time would have to be computed proportionally. It is suggested that the answer to this particular problem may be found in the provisions of the penultimate paragraph of Section 486-7b, General Code. This paragraph provides that your commission, after consultation with the heads of departments affected, may authorize higher salary ranges for particular classes and locations when substantial evidence is presented as to the inability of the State to recruit and retain qualified workers at the established ranges in the particular class and location, upon the approval of the Director of Finance.

In specific answer to your questions, you are advised, therefore, that it is my opinion that :

1. Deputy inspectors and supervisors, state examiners, assistant state examiners and other employes in the Bureau of Inspection and Supervision of Public Offices are subject to the provisions of Amended Substitute House Bill No. 382 of the 98th General Assembly.

2. The provisions of Section 276, General Code, relating to the classification and per diem compensation of state examiners and assistant state examiners and the provisions of Section 285, General Code, relating to the fixing of the compensation of assistants employed in or on behalf of the Bureau of Inspection and Supervision of Public Offices to disclose facts concerning any matter under investigation by said Bureau, in so far as such assistants are non-professional persons, have been superseded by Section 486-7a et seq., General Code.

3. It is not within the authority of the Civil Service Commission of Ohio under any provision of Amended Substitute House Bill No. 382 to

authorize the payment of the compensation of state examiners or assistant state examiners in the Bureau of Inspection and Supervision of Public Offices upon a per diem basis.

4. The Civil Service Commission of Ohio may authorize the payment of state examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices to be compensated on the basis of hourly rates upon determining that it is necessary or desirable to compensate such employes on that basis, and upon such determination the hourly rate of such employes is determined by a fixed formula proportionate to the monthly rate for the class in which they are assigned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.