

**Note from the Attorney General's Office:**

1937 Op. Att'y Gen. No. 37-1190 was questioned  
by 1986 Op. Att'y Gen. No. 86-015.

1189.

APPROVAL—OFFICIAL BOND OF ALBERT C. SMITH IN THE SUM OF \$5,000.00 FOR FAITHFUL DISCHARGE OF DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR OF HIGHWAYS IN TRUMBULL COUNTY, OHIO.

COLUMBUS, OHIO, September 17, 1937.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration, official bond of Albert C. Smith, as principle, and the Standard Accident Insurance Company, a Michigan corporation of Detroit, Michigan, as surety, in the penal sum of Five Thousand (\$5000.00) Dollars, conditioned that the said Albert C. Smith shall faithfully discharge the duties imposed upon him by law in the office of the resident district deputy director in Trumbull County, to which he has been recently duly appointed, effective September 1, 1937.

After examination, I find said official bond in proper legal form and I have accordingly endorsed my approval thereon and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

1190.

JUVENILE COURT CODE—EMPLOYEES AND OFFICERS MENTIONED IN SECTION 1639-18, OHIO GENERAL CODE—REMOVAL FROM CLASSIFIED SERVICE OF CIVIL SERVICE COMMISSION—TO BE APPOINTED AT PLEASURE OF JUVENILE JUDGE.

**SYLLABUS:**

*The new Juvenile Court Code, effective August 19, 1937, expressly takes out of the classified service of the civil service the employees and officers mentioned in Section 1639-18, General Code, all of whom must be appointed by the Juvenile Judge and hold their positions subject to the pleasure of the Juvenile Judge.*

COLUMBUS, OHIO, September 20, 1937.

HON. MARGARET M. ALLMAN, *Director of Public Welfare, Columbus, Ohio.*

DEAR MADAM: This will acknowledge the receipt of your recent request for my opinion which reads as follows:

"This morning I had a call from Mr. Galen F. Auchauer, Chief Probation Officer, Hamilton County Juvenile Court, Court House, Cincinnati, and he raised the following question:

The new juvenile code goes into effect August 19th and legal advisors have told him that only the Judge and one other employee will hold over. The way the law is written the Judge will have full authority to make whatever changes he pleases in the present employees of the court as well as the additional ones as set up in the law. In other words, those under civil service will have no standing after this law goes into effect.

In talking to other Juvenile Judges this particular question had not be raised. It was assumed that the law gave them authority to appoint additional employees.

Could we have an opinion on this particular phase of the law and may I hear from you by five o'clock this afternoon as to the probable time when this opinion might be released? If further specific information is required your office can secure it by calling Mr. Auchauer in Cincinnati."

The new Juvenile Court Code was enacted by Amended Senate Bill No. 268 of the 92nd General Assembly, and entitled:

#### "AN ACT

To revise, consolidate and codify the juvenile laws of the State of Ohio by enacting Sections 1639-1 to 1639-60 of the General Code, inclusive, and to repeal Sections 1639 to 1683-1, inclusive, of the General Code of Ohio relating to minor children."

Section 1639-62, General Code, provides as follows:

"That existing Sections 1639 to 1683-1, inclusive, of the General Code, and all other sections of the General Code inconsistent herewith, be, and the same are hereby repealed."

It is provided by Section 1639-7, General Code, that the Juvenile Court or the Court of Common Pleas, Division of Domestic Relations of any county, separately and independently created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter. This section further provides that except in counties in which there now is or may hereafter be created a separate and independent juvenile court or court of domestic relations, there is hereby established and created within the probate court, a juvenile court, presided over by the probate judge, which shall be a court of record and which shall exercise such powers and jurisdiction. ,

It is noted at the outset that a new Juvenile Court is created within the Probate Court except where a separate Juvenile Court might hereafter be created, and except where a Court of Domestic Relations already possesses the power of a Juvenile Court. Otherwise, no new courts are created, the courts now in being, except as above stated, will administer the Juvenile Court Code.

Section 1639-11, General Code, provides that the court shall have power to frame and publish rules of procedure for the conduct of its officers and employes.

Section 1639-7, General Code, provides that when a Court of Domestic Relations exercises the jurisdiction under the Juvenile Court Code, the clerk of the Court of Common Pleas shall keep the records of such courts, and in all other cases the Juvenile Judge shall be the clerk of his own court, which provision is consistent with Section 10501-1, et seq., providing that the Probate Judge shall be the clerk of his own court. This is pertinent, inasmuch as the new Juvenile Court Code provides for the establishment of a new Juvenile Court within the Probate Court, as above set forth.

Section 1639-18, General Code, reads in part as follows:

“The judge may appoint a chief probation officer, and as many probation officers, stenographers, bailiffs and other employees as may be necessary. Such appointees shall receive such compensation and expenses as the judge shall determine and shall serve during the pleasure of the judge.”

The provision of Section 1639-18, General Code, with respect to the power of the judge to appoint probation officers, stenographers, bailiffs and other employees as may be necessary, is clear and susceptible of no construction, the legislature having intended to permit the Juvenile Judge to make such appointments, regardless of whether or not the persons holding such positions in the Juvenile Court were within the provisions relating to the classified service of the civil service or not.

Section 1639-62, General Code, expressly repeals any other sections of the General Code which are inconsistent with this provision.

Inasmuch as persons holding such positions in the Juvenile Courts have heretofore, with some exceptions, been chosen from persons certified in the classified service, it remains to be determined whether or not the legislature has such power to now terminate such appointment.

The constitutional provision as regards civil service is as follows:

Art. XV, Par. 10: 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, from competitive examinations. Laws shall be passed providing for the enforcement of this provision."

The legislature, in accordance with this constitutional mandate, has classified the civil service of the State into two great divisions, the classified service and the unclassified service, which provision will be found in Section 486-8, General Code.

It was said in the case of *Jenkins vs. Schueller*, 15 O. N. P. (N.S.) 438, that the unclassified service constitutes a group of exceptions to the general system of the classified service set up by the law. Quoting further from the above mentioned case at page 440, the court said:

"Without further quotation it may be said at once that the classified service, as defined and provided for in the civil service act, includes all those public offices, positions and employments to which appointment or election is made to depend on merit as determined by examination and, with few exceptions, competitive examination, and from which incumbents can not be discharged, suspended or reduced except for cause, and the unclassified service includes those offices, positions and employments to which appointments may be made or the incumbents elected at the discretion of the appointing officer or board and from which the incumbent may be removed, suspended or reduced at the pleasure of some superior board or officer.

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"Exceptions such as these, exist in the nature of things and are not merely artificial, and hence appear in every civil service system that is devised. They constitute a weak spot in the system, the place where abuses are likely to creep in, and the General Assembly of this state recognizing the danger, has taken the precaution to designate specifically the offices and employments which shall be treated as exceptions to the general rule,

and has not left this to the discretion of any board or officer. The civil service commission itself has no authority under this statute to determine what offices and positions shall be excepted from the merit class. In some civil service systems the commission or board in charge of the examinations and certifications is given power to designate what particular employments shall be included in the unclassified service and what not but in the Ohio act this is not left to the discretion of anyone."

In Opinions of the Attorney General for 1924, Vol. I, Page 539, it was held that it seemed to be the policy of the State of Ohio, both statutory and constitutional, to maintain the classified service excepting in those cases in which an opposite intent is clearly expressed.

There can be no doubt but that the legislature could change the civil service laws at will. This is exemplified by referring to the first enactment in obedience to the constitutional mandate that the civil service applied only to the cities in this state. It was subsequently amended to apply to all employment on behalf of the State, with certain exceptions, as stated in the law, namely, section 486-8. The constitutional provision seems to have left the problem of determining what is the civil service of the State up to the legislature. The legislature, by the enactment of the New Juvenile Court Code, has exempted from the classified service the probation officer, assistant probation officers, stenographers, bailiffs and other employees as may be necessary, and has provided that such appointees shall be appointed by the Juvenile Judge and serve at his pleasure. If the legislature has previously so classified the civil service, can it now be said that it cannot further classify the civil service by exempting the employees mentioned above. Certain paragraphs of section 486-8 are inconsistent with this provision, and being inconsistent, are repealed in so far as the inconsistency appears. Such employees then belong to the unclassified service of the state civil service system.

It was said in *State ex rel. Dunn vs. Fosdick*, 21 O. N. P. (N.S.) 187, that it was clear that since the adoption of the civil service law, questions of its validity so far as they relate to the State Constitution can arise only in respect to particular provisions of the statute. In my opinion, these changes only amount to a change in classification, and so long as the classification is reasonable, there can be no doubt concerning the constitutionality of the same. The constitutional provision quoted above confers plenary power on the legislature to pass a civil service law.

Inasmuch as the employees above referred to, by the enactment of the new Juvenile Court Code now come within the unclassified provisions of the civil service law, such persons, unless appointed for a definite

term, otherwise fixed by statute or by contract, hold their positions only at the pleasure of the appointing power.

It is therefore my opinion in specific answer to your inquiry that only the Judge of the Juvenile Court hold over in office and all other employees, including the Chief Probation Officer, may be re-appointed by the Juvenile Judge, and after appointment hold their positions subject to the pleasure of the Judge and those not expressly re-appointed by the fact of their continuing in their positions hold the same at the pleasure of the Judge.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1191

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA  
COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, September 20, 1937.

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

GENTLEMEN :

Re: Bonds of City of Cleveland, Cuyahoga County, Ohio,  
\$10,000.00.

The above purchase of bonds appears to be part of two issues of bonds of the above city dated June 1, 1920.

The transcript relative to fire department bonds in the aggregate amount of \$150,000 was approved by this office in an opinion rendered to your board under date of October 22, 1935, being Opinion No. 4822.

I have examined the transcript relative to the police department bonds in the aggregate amount of \$150,000, bearing interest at the rate of 5½% per annum.

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 a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*