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CIVIL SERVICE, CLASSIFIED—POSITION, COUNTY DIRECTOR OF WELFARE IN CLASSIFIED SERVICE—SECTION 2511-1 G. C.

SYLLABUS:

The position of county director of welfare created under the provisions of Section 2511-1, General Code, is in the classified civil service.

Columbus, Ohio, August 31, 1943.

Civil Service Commission of Ohio,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your recent communication, which reads as follows:

"House Bill No. 140 enacted by the recent General Assembly to provide for the consolidation of county welfare activities reads in part that:

'The county department of welfare shall consist of a county director of welfare appointed by the board of county commissioners, and such assistants and other employees as may be deemed necessary for the efficient performance of the welfare service of the county.' (Section I.)

The Bill further provides that:

'The assistants and other employees of the county department of welfare shall be in the classified civil service, and may not be placed in or removed to the unclassified service. The county director of welfare and such assistants and other employees under civil service must be residents of the county in which they are appointed at the time of such appointment. If no eligible list is available, provisional appointments shall be made until such eligible list is available.' (Section II.)

Section 486-b-8 provides that 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.

The State Civil Service Commission desires to respectfully request your opinion upon the question as to whether the position of county director of welfare provided for in the above mentioned Act shall be considered in the classified or unclassified service of the state."

House Bill No. 140, which was passed by the 95th General Assembly May 26, 1943, becomes effective September 9, 1943. Sections 1 and 2 thereof have been codified as Sections 2511-1 and 2511-2, General Code, and respectively provide:

Section 1. "The county commissioners of any county may by a resolution which has been unanimously adopted, establish a county department of welfare which, when so established, shall be governed by the provisions of this act. Such department shall function from and after the date fixed in such resolution, which date shall be not less than thirty days nor more than ninety days after the adoption of such resolution, but not before the first day of January, 1944. *The county department of welfare shall consist of a county director of welfare appointed by the board of county commissioners, and such assistants and other employees as may be deemed necessary for the efficient performance of the welfare service of the county.* Before entering upon the discharge of his duties, the county director of

welfare shall give a bond conditioned for the faithful performance of his duties in such sum as shall be fixed by the county commissioners. The county director of welfare may require any assistant or employee under his jurisdiction to give a bond in such sum as may be determined by the county commissioners. All bonds given under this section shall be with a surety or bonding company authorized to do business in this state, conditioned for the faithful performance of the duties of such director, assistant or employee. The expense or premium for any bond required by this section shall be paid from the appropriation for administrative expenses of the department. Such bond shall be deposited with the county treasurer and kept in his office."

Section 2. "Under the direction of the board of county commissioners, the county director of welfare shall have full charge and control of the county department of welfare. He shall prepare the annual budget estimate of the department and submit it to the board of county commissioners. Before submitting the budget estimate to the county commissioners, the county director of welfare shall consider the recommendations of the welfare advisory board relative thereto, if there be such a board in the county. The director, with the approval of the board of county commissioners, shall appoint all necessary assistants, superintendents of institutions, if any, under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employees therein. *The assistants and other employees of the county department of welfare shall be in the classified civil service, and may not be placed in or removed to the unclassified service. The county director of welfare and such assistants and other employees under civil service must be residents of the county in which they are appointed at the time of such appointment. If no eligible list is available, provisional appointments shall be made until such eligible list is available.*

The county commissioners, except as provided in this act, may provide by resolution for the coordination of the operations of the county department of welfare and those of any county institution whose board or managing officer is appointed by them." (Emphasis added.)

It will be noted that the above section provides that all assistants and other employes of the county department of welfare shall be in the classified service, but contains no provision in this regard with respect to the county director of welfare.

From this it might seem to appear that the General Assembly intended the position of county director of welfare to be in the unclassified

service. In other words, it might be argued that the express language of the statute placing assistants and other employes in the classified service, without mention of the director with respect thereto, implies his exclusion therefrom.

Seemingly such argument finds support in the legislative proceedings in the enactment of said section. When House Bill No. 140 in its original form was introduced in the House of Representatives of the General Assembly, section 2 thereof contained the following provision:

> "The county director of welfare and the assistants and other employees of the county department of welfare shall be in the classified civil service, and may not be placed in or removed to the unclassified civil service."

Said bill, after having passed the House of Representatives, was amended in the Senate by deleting the words "The county director of welfare." (See Senate Journal, May 13, 1943, page 3.) Such amendment was concurred in by the House. (See House Journal, May 26, 1943, page 3.)

It would appear that the rejection by the General Assembly of the above provision, contained in the bill as originally introduced, is most persuasive to the conclusion that that body intended the county director of welfare to be in the unclassified service.

In this regard, however, it should be borne in mind that the above section must be construed in light of all other existing statutory provisions relative to the same subject and having a purpose or scope in common therewith. With respect thereto, it is stated in 37 O. Jur., pages 594, 599:

> "The general assembly, in enacting a statute, is assumed, or presumed, to have legislated with full knowledge and in the light of all statutory provisions concerning the subject-matter of the act, because the legislative mind, in the enactment of a statute, is directed to what has been enacted and exists as a part of the statutory law of the state on the same subject, or subjects related to it. It is therefore a fundamental rule of statutory construction that sections and acts in pari materia should be construed together as if they were a single statute. All correlated parts of a statute should be construed together. Reasons for these rules are that such statutes are considered as acting upon one system and as having a common object, policy, and spirit. This is especially true in regard to a code of statutes relating to one subject, which may be inferred, and even presumed, to be governed by one spirit and policy. Without these

rules there would be neither system nor harmony in the statutes, and their construction would, in most cases, be a mere matter of arbitrary guessing. However, a statute separate and apart from, and not in pari materia with, other acts is to be construed in its own light."

While the above section contains no reference to the statutes dealing generally with the civil service of the state, such statutes are nevertheless in pari materia and consequently must be construed together therewith.

Pursuant to the mandate of the people, as expressed in Section 10 of Article XV of the Constitution of Ohio, the General Assembly of this state enacted a number of statutes for the enforcement of the requirement of such constitutional provisions, with respect to appointments and promotions in the civil service of the state. Such statutes have been codified as Sections 486-1 to 486-35 of the General Code. Section 486-1 provides in part:

1. "The term 'civil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof."

2. "The 'state service' shall include all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts."

3. "The term 'classified service' signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof."

Section 486-8 reads:

"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.

1. All officers elected by popular vote or persons appointed to fill vacancies in such offices.

2. All election officers and the employes and clerks of persons appointed by boards of deputy supervisors and inspectors of elections.

3. The members of all boards and commissions and heads of principal departments, boards and commissions appointed by

the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or if there be no mayor such other similar chief appointing authority of any city or city school district. Provided, however, that nothing contained in this act shall exempt the chiefs of police departments and chiefs of fire departments of municipalities from the competitive classified service as provided in this act.

4. The members of county or district licensing boards or commissions, and boards of revision and assistant assessors.

5. All officers and employes elected or appointed by either or both branches of the general assembly, and such employes of the city council as are engaged in legislative duties.

6. All commissioned, non-commissioned officers and enlisted men in the military service of the state including military appointees in the offices of the adjutant general.

7. All presidents, directors, superintendents, principals, deans, assistant deans, instructors, teachers and such employes as are engaged in educational or research duties connected with the public school system, colleges and universities; and the library staff of any library in the state supported wholly or in part at public expense.

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.

9. The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals.

10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.

11. Assistants to the attorney-general, special counsel appointed or employed by the attorney-general, assistants to county prosecuting attorneys and assistants to city solicitors.

12. Such teachers and employes in the agricultural experiment stations; such teachers in the benevolent, penal or reforma-

tory institutions of the state; such student employes in normal schools; colleges and universities of the state; and such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service; provided, that such exemptions shall be by order of the commission, duly entered on the record of the commission with the reasons for each such exemption.

(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. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act.

2. The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the commission. The commission shall in its rules require an applicant for registration in the labor class to furnish such evidence or take such tests as it may deem proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the commission shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment."

It will be noted that the above section provides "that the classified service shall comprise all persons * * * not specifically included in the unclassified service". Therefore, unless the position of county director of welfare is by statute specifically included in the unclassified service,

such position would be in the classified service. A reading of the above section discloses that such position is not among those in the unclassified service, and enumerated therein. Nor is there any language in said House Bill No. 140 which specifically includes such position in the unclassified service.

The question of whether or not certain positions have been specifically included in the unclassified service has been before the courts of this state a number of times. The most recent case appears to be State, ex rel. v. Tyroler, 137 O. S. 24. This case is one wherein relatrix sought by mandamus to be restored to a position which she had obtained as the result of a competitive examination and appointment thereto from an eligible list. She was dismissed without charges being filed and without opportunity of filing a written explanation. Respondent maintained the position was not within the classified service. It appears that relatrix was appointed to her position by virtue of Section 1639-18, General Code, the first paragraph of which reads:

> "The judge may appoint a chief probation officer, and as many probation officers, stenographer, bailiffs and other employes 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.*"

In the concluding paragraph of the decision the court said: "The court of appeals having based its decision upon Ellis v. Urner, 125 Ohio St. 246, * * * its judgment is affirmed." The court then must have concluded that the language "and shall serve during the pleasure of the judge", as the same appears in Section 1639-18, supra, was tantamount to saying the position was in the unclassified service. This conclusion becomes clear upon examining the case of Ellis v. Urner, supra, wherein the provisions of Section 1558-35, General Code, were involved. The comparable language in that section was to the effect that certain persons appointed thereunder "may be removed by such judge at any time." However, said section also provided expressly that certain employes should be in the unclassified service. I quote paragraphs 2 and 3 of Section 1558-35, supra, which reads:

> "The bailiff shall hold his office during the pleasure of the clerk and may be removed by the clerk at any time. The deputy bailiffs appointed by the clerk shall hold their respective positions during the pleasure of the clerk, and the clerk may remove said deputy bailiffs at any time. The deputy bailiffs appointed by the judges, including the deputy bailiff appointed by the presiding judge, shall hold their respective positions during the

pleasure of the judge making the appointment and may be removed by such judge at any time.

The assistant clerk, the chief deputy clerks, all of the deputy clerks, the bailiff, all of the deputy bailiffs, and the stenographers, official stenographers, interpreters, statistical clerks, probation officers and any and all other employees of said court, shall be in the unclassified service as that term is used in the statutes and laws relating to civil service and no civil service commission shall have any jurisdiction or supervision over their appointment, qualifications, activities, tenure or removal."

It will be observed that in this instance the General Assembly apparently did not wish to leave any doubt that it intended the positions in question to be in the unclassified service. They were placed in such service in no uncertain terms and beyond any doubt whatever.

I might also call attention to the case of State, ex rel. Fesler, v. Green, et al., 40 O. App. Rep. 400, wherein the wording of Section 2968, General Code, was being considered. At that time said section read in part as follows:

"The board of county commissioners may in their discretion appoint such clerks as they deem necessary for the purpose of investigating the qualifications, disability and needs of any person who has theretofore been placed on the blind list, or who has made an application to be placed on such list. Said clerks shall be known as 'blind relief clerks' and shall serve for such length of time only as said county commissioners prescribe *and may be discharged by said commissioners at any time.*"

(Emphasis added.)

In concluding that the appointees in question were not in the classified service, the court at page 404 said:

"It therefore is significant that the appointment of these two clerks was for a temporary period, and to end at a specified time, and we deem it essential to a consideration of this section, and it is significant, that the commissioners are not only given the power of appointment, *but are given likewise the power to discharge, and this to our notion precludes the thought that these two clerks could be in the classified service,* and in respect thereto that portion of the plaintiff's petition for injunctive relief will be denied." (Emphasis added.)

In the light of the foregoing authorities, it would seem that in order for a position to be regarded as in the unclassified service there must be at least some statutory right on the part of the appointing authority to

terminate the employment at his pleasure and without assigning any reasons for so doing.

While, in the instant case, it may appear to have been the intention of the General Assembly by amending the bill as it did to exclude the county director of welfare from the classified service, the fact remains that he was not in express statutory terms specifically included in the unclassified service.

It is fundamental that errors of a legislative body may not be corrected by the courts. What the General Assembly omitted cannot be supplied by interpretation. The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. Slingluff, et al. v. Weaver, et al., 66 O. S. 621. In regard thereto, it is stated in 37 O. Jur., page 500:

> "These principles are to be adhered to notwithstanding the fact that the court may be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact * * *."

In specific answer to your question, you are advised that in my opinion the position of county director of welfare created under the provisions of Section 2511-1, General Code, is in the classified civil service.

Respectfully,

THOMAS J. HERBERT,
Attorney General.