

sidered as personal property of the tenant. And inasmuch as under the facts stated, this property, under the provisions of Section 5325-1, General Code, is property used in business by the owner, the same is clearly taxable as personal property in the name of such owner.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3128.

CIVIL SERVICE—EMPLOYEE MAY BE TRANSFERRED FOR 90 DAYS
FROM ONE POSITION TO ANOTHER IN SAME DEPARTMENT.

SYLLABUS:

An employe in the classified civil service, may be transferred for a period of ninety days or for a longer period from one position to a similar position within the same department, regardless of the objections of such employe.

COLUMBUS, OHIO, August 31, 1934.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 1-(a) of Rule X of the rules and regulations of this Commission provides, as follows:

‘Transfer of a person holding a position in the competitive classified service who has served the required probationary term, may be made for a period not exceeding thirty days, from one position to a similar position of the same class, grade and character of work, and having the same pay, within a department without notice to the Commission, but this shall not be construed as limiting the power of the head of an institution in making such assignments of the officers therein as he may deem advisable.’

It is quite clear that the permanent transfer of a classified employe against his will could not be accomplished, but the question presents itself from one of the state departments of the temporary transfer in the positions of Branch Office Manager from the city of Cleveland to the city of Cincinnati, and vice versa, which it appears to the appointing authority for good and sufficient reasons and for a temporary period only, to be very necessary and important, and for the good of the service.

If, after a full explanation of the situation by the Department Director, the State Civil Service Commission is satisfied that such temporary transfer is clearly for the good of the service, can same be put into effect for a period of not to exceed three months, regardless of the objection of the incumbents. The permanent status and location of

the employe is fully protected, the question being merely that of temporary transfer for the good of the service, which after a full explanation of the situation and circumstances meets with the approval of the State Civil Service Commission. Has the regular and permanent employe a legal right to refuse to accept such temporary transfer?"

While you do not state, I assume that you have reference to the transfer of an employe from one position to another position within the same department and not to a transfer from one department to another department.

In your letter reference is made to your Rule X, section 1-(a). This rule purports to give your Commission authority to permit the transfer of an employe for a period of not to exceed thirty days from one position to a similar position of the same class, grade and character of work, and having the same pay within a department, without notice to the Civil Service Commission. This rule, however, provides further: "but this shall not be construed as limiting the power of the head of an institution in making such assignments of the officers therein as he may deem advisable." The Civil Service laws were enacted in pursuance of section 10, Article XV of the Ohio Constitution, for the purpose of securing appointments to the public service on the basis of merit and fitness. By virtue of section 486-7, General Code, the Commission is given the right to make rules and regulations. The Civil Service Commission has only such powers as are expressly given to it by statute and such implied powers as are necessarily implied from those expressly granted. *Civil Service Commission vs. State, ex rel. Kennedy*, 127 O. S. 261. The first branch of the syllabus of this case reads as follows:

"Where a certain jurisdiction is duly conferred, duties assigned and powers granted to a board or commission, such board or commission cannot confer upon itself further jurisdiction or add to its powers by the adoption of rules under authority granted to adopt rules of procedure."

Likewise, if a Civil Service Commission is given certain powers by statute, it does not lie within the power of such Commission to deprive itself of such powers by rules or regulations. See the case of *State, ex rel. Weiss vs. Keefer*, 3 O. App. 426. While the first part of the rule quoted, supra, in your letter seems to limit the transfer to thirty days, it would appear that this provision is modified expressly by the last part of the rule.

Section 486-2 General Code, reads in part as follows:

"* * * no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employe in the civil service of the state, the several counties, cities and city school districts thereof, in any manner or by any means other than those prescribed in this act or by the rules of the state or municipal civil service commissions within their respective jurisdictions as herein provided."

Section 486-16, General Code, reads in part as follows:

"With the consent of the commission, a person holding an office or position in the classified service may be transferred to a similar position

in another office, department or institution having the same pay and similar duties; but no transfer shall be made from an office or position in one class to an office or position in another class, nor shall a person be transferred to an office or position for original entrance to which there is required by this act (G. C. §§486-1 to 486-31), or the rules adopted pursuant thereto, an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by such person."

It is readily seen that under the express provisions of section 486-16, General Code, supra, a person could be permanently removed from one department to another department with the consent of the Commission.

In the situation presented in your letter, the transfer is only for ninety days and is specifically approved by the Commission as being for the best interests of the service. The only possible objection to this would be the provisions of the first part of your rule quoted supra. I cannot agree with a conclusion that would limit the transfer to thirty days.

The question presented by your inquiry is not a new one, it having been passed upon by this office in an opinion to be found in Opinions of the Attorney General for 1917, Volume III, page 2122. The third and fourth branches of the syllabus of this opinion read as follows:

"3. An employe appointed from a state-wide eligible list is under the control of the head of the department who, in the proper management of the affairs of such department, may require the services of such employe in different localities from time to time as the exigency of public service requires, so long as the transfer is not from one department to another in violation of section 16 of the civil service law.

4. Where a state has been divided into districts by a department for its own administration, employes in one district may be removed to another district by the head of such department without the approval of the civil service commission, but subject to the rules above given as to the reasons for such transfer if the same amount to any discrimination in position against such employes."

It is significant to note that the sections of the General Code relative to the opinion at that time are substantially the same at the present time. Likewise, the employe in the present situation cannot complain since the Commission has determined such transfer to be for the best interests of the service and, consequently, the employe could not be heard to say that such transfer was not for good cause.

Without further prolonging this discussion, it is my opinion that an employe in the classified civil service, may be transferred for a period of ninety days or for a longer period from one position to a similar position within the same department, regardless of the objections of such employe.

Respectfully,

JOHN W. BRICKER,

Attorney General.