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CIVIL SERVICE — UNCLASSIFIED — HEADS OF SEVERAL DIVISIONS—ESTABLISHED WITHIN ONE OF STATE ADMINISTRATIVE DEPARTMENTS — LIQUOR CONTROL — CHIEFS OF DIVISIONS—SECTION 121.07 RC.

SYLLABUS:

The heads of the several divisions established within one of the administrative departments of the state as provided in Section 121.07, Revised Code, are in the unclassified civil service of the state.

Columbus, Ohio, February 7, 1956

Hon. William C. Bryant, Director, Department of Liquor Control  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A serious question has arisen within the Department of Liquor Control as to whether or not Chiefs of Divisions created under the authority of Section 121.07 R.C. are in the classified or unclassified service of the State of Ohio.

"It has been brought to the Department's attention that the Attorney General of Ohio has issued two opinions in connection with the question. The opinions are apparently in direct conflict. The first opinion is found in 1930 O.A.G. No. 1388, Vol. 1, p. 60, and the second is found in 1949 O.A.G. No. 565, p. 266.

"I, therefore respectfully request your opinion as to the following question:

"Is the position of Chief of a Division created under Section 121.07, R.C. within the classified or unclassified service of the State of Ohio?"

Section 121.07, Revised Code, reads in part as follows:

"The officers mentioned in sections 121.04 and 121.05 of the Revised Code shall be under the direction, supervision, and control of the directors of their respective departments, and shall perform such duties as such directors prescribe.

"With the approval of the governor, the director of each department *shall establish divisions within his department*, and distribute the work of the department among such divisions. Each officer created by section 121.04 of the Revised Code shall be the head of such a division.

"With the approval of the governor, the director of each department may consolidate any two or more of the offices created in his department by section 121.04 of the Revised Code, or reduce the number of or create new divisions therein.  
\* \* \*

(Emphasis added.)

The offices "created" in Sections 121.04 and 121.05, Revised Code, are expressly placed in the unclassified service by the provisions of Section 121.14, Revised Code. There is thus an implication in that section that offices created under authority of Section 121.07, Revised Code, are not to be deemed within the unclassified category. This implication was noted in Opinion No. 565, Opinions of the Attorney General for 1949, p. 266, the syllabus in which is as follows:

"The position of Chief of the Division of Juvenile Research created under Section 154-8, General Code, by the Director of Public Welfare within the Department of Public Welfare, not having been exempted under Section 486-8, paragraph (a), subsection 8, General Code, is within the classified civil service."

The writer of the 1949 opinion, after noting this implication in what

was then Section 154-19, General Code, then went on to point out the provision of then Section 486-8, General Code, now Section 143.08, Revised Code, to the effect that the classified service shall comprise "all persons in the employ of the state \* \* \* not specifically included in the unclassified service \* \* \*." The writer then said:

"\* \* \* It may be seen that the position of Chief of the Division of Juvenile Research is *not specifically included in the unclassified service unless he comes within the purview of paragraph (a), subsection 8 as an assistant of an appointive executive officer.* \* \* \*"  
(Emphasis added.)

In reaching this conclusion the writer of the 1949 opinion completely ignored the earlier ruling in Opinion No. 1388, Opinion of the Attorney General for 1930, p. 60, the syllabus in which is as follows:

"The office of chief of the division of accounts and control created by virtue of the provisions of Section 154-8 of the General Code is in the unclassified civil service of the state by virtue of the provisions of Section 154-19 of the General Code."

The conclusion in the 1930 opinion was quite evidently based on the provision then found in Section 154-7, General Code, and now set out in Section 121.06, Revised Code, as follows:

"The *officers mentioned* in sections 121.04 and 121.05 of the Revised Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director."  
(Emphasis added.)

On this point the writer of the 1930 opinion said:

"\* \* \* You will note that Section 154-8 of the General Code is adopted by reference in Section 154-5 of the General Code, and therefore is as much a part of said section as if its terms had been incorporated therein. It appears to me that the Legislature intended to exempt from the classified civil service of the state the offices created under the terms of Section 154-6 of the General Code and the divisions created under the terms of Section 154-8 of the General Code. The legislative intent is borne out by the provisions of Section 154-7 of the General Code, which provides as follows:

"The *officers mentioned* in Sections 154-5 and 154-6 of the General Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director."

“There can be no doubt but that the head of a division created under the terms of Section 154-8 of the General Code is an ‘officer mentioned’ in Section 154-5 of the General Code. \* \* \*”  
(Emphasis added.)

\* \* \* There is, of course, no “mention” in Section 121.04, Revised Code, of the “officers” to whom I understand you here to refer. That section lists five statutory divisions within the department of liquor control, whereas I understand your inquiry to relate to the heads of such additional or new divisions created as provided in Section 121.07, Revised Code. “Mention” of these non-statutory divisions, and of the officers heading them, is found in the following language in Section 121.05, Revised Code:

“In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 121.04 of the Revised Code, or as *the head of one of the divisions created within such department as authorized by section 121.07 of the Revised Code.* \* \* \*”  
(Emphasis added.)

I am in complete agreement with the writer of the 1930 opinion that the language emphasized above constitutes a “mention” of these division heads within the meaning of Section 121.06, Revised Code. It follows, therefore, because it is provided in the latter section that they shall “hold office during the pleasure” of the director concerned, that they cannot be deemed to be in the classified service for this section must be read in *pari materia* with the provisions of Section 143.08, Revised Code, defining the classified and unclassified service.

Accordingly, in specific answer to your inquiry it is my opinion that the heads of the several divisions established within one of the administrative departments of the state as provided in Section 121.07, Revised Code, are in the unclassified civil service of the state.

Respectfully,  
C. WILLIAM O’NEILL  
Attorney General