

further attention in closing the transaction for the purchase of this property by the issue of your voucher covering the purchase price of the property in the amount above stated.

In this connection, I am advised that in addition to paying the purchase price of the property, the State, acting through your department, is to pay to the abstracters Daily, Moats and Wills of Waverly, Ohio, an amount to be agreed on covering their services in preparing the certificate of title of the above described property and for such other services as they may have rendered in connection with this matter.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3432.

CIVIL SERVICE LAW—STATE OF OHIO—DEPARTMENT
OF HIGHWAYS—POSITIONS—DEPUTY DIRECTORS,
RESIDENT DIVISION DEPUTY DIRECTORS AND RESI-
DENT DISTRICT DEPUTY DIRECTORS—NOT WITHIN
CLASSIFIED SERVICE.

SYLLABUS:

The positions of deputy directors, resident division deputy directors, and resident district deputy directors in the Department of Highways are not within the classified service under the civil service law of Ohio.

COLUMBUS, OHIO, December 20, 1938.

HON. IVAN R. AULT, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of your communication which requests my opinion on the following questions:

“Are the ‘deputy directors,’ ‘resident division deputy directors,’ and ‘resident district deputy directors’ (named in General Code Sections 1181, 1182 and 1183) ‘deputies of a principal executive officer authorized by law to act for and in the place of their principal and holding a fiduciary relation to their principal,’ within the meaning and construction of General Code Section 486-8, subsection 9?”

“Do the above named members of the Highway Department’s personnel, or any of them, come within the classified service, competitive class of the civil service of the State of Ohio?”

The laws relating to the organization of the state highway department provide for the appointment of four deputy directors (Section 1181, General Code), a resident division deputy director for each of the principal state highway divisions (Section 1182, General Code), and a resident district deputy director for each of the state highway resident districts (Section 1183, General Code). In order to determine whether such employes are within the purview of the civil service law it is necessary first, to determine the nature of the relationship between these employes and the highway department, and then to decide whether their relationship brings them within the category of classified civil service employment.

In examining the nature of the positions referred to in your communication the first to be considered is that of deputy director whose relationship to the highway department is described in Section 1181, General Code, the pertinent provisions of which are as follows:

“The director shall also appoint four deputy directors, who shall be competent civil engineers and serve during the pleasure of the director.

* * *

“The salary of each said deputy director shall be four thousand five hundred dollars per annum. The director shall require each deputy director to give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director.”

* * *

The position of resident division deputy director is described in Section 1182, General Code, which reads in part as follows:

“He (Director, Department of Highways) shall appoint and assign to each of such divisions a resident division deputy director who shall perform such duties as may be prescribed by the director in all matters arising within the division to which such deputy is assigned. Each of said resident division deputy directors shall be a competent civil engineer and shall be paid a salary of four thousand dollars per annum, and shall serve during the pleasure of the director. Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. * * *”

Finally, the position of resident district deputy director is provided for by Section 1183, General Code, the pertinent provisions of which are as follows:

“The director may appoint and assign a resident district deputy director to each resident district.

* * *

“They shall be appointed to serve during the pleasure of the state director, and receive a salary of not to exceed three thousand dollars per annum, and give bond in the sum of five thousand dollars.”

* * *

It is apparent that for our purpose there are two salient elements in the relationship between the employes referred to and the department of highways: First, they are appointed to these positions by the director and serve during his pleasure; second, they are required to give bond for the faithful performance of the duties imposed on them.

It is apparent on the face of your question that there has been an effort toward its solution by attempting to fit the positions hereinbefore described into the category of so-called “unclassified service” as defined in Section 486-8 (a) 9 which reads as follows:

“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.”

Although an analysis of the problem in this direction would undoubtedly be fruitful, there is available a broader and more positive basis on which to dispose of the question presented by you.

There is, accurately speaking, no “unclassified” civil service ranking; either a position is in classified civil service or it is beyond the pale of the civil service provisions. However, the provisions of Section 486-8 (a) describe “positions in unclassified service” but as we shall see it does not completely outline all employment which is not classified. In spite of the fact that Section 486-8 (a) (b) states in part that,

“The classified service which comprises all persons in the employ of the state . . . not specifically included in the unclassified service . . .”

The fundamental purposes of the civil service law are succinctly stated by Judge Pugh in the case of *State, ex. rel., Jenkins et al. vs. Schneller* in 15 O. N. P. (NS) 438 at page 440 as follows:

“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.”

* * *

It is clear that the director of the department of highways has been expressly empowered by the legislature to appoint persons to the positions in question without examination and that they serve in their respective capacities during the pleasure of the director. The legislature granted the director of highways this unrestricted power subsequent to the enactment of those provisions which create a line of demarcation between those positions which come within the purview of the civil service law and those which do not. Thus, when the statutes creating the positions referred to provide for appointments and discharges in a manner which is antithetical to the purpose of the civil service law, it is evident that it was the intention of the legislature to exclude such positions from the operation of that law.

Therefore, it is my opinion that ‘deputy directors,’ ‘resident division deputy directors,’ and ‘resident district deputy directors’ do not come within the classified service, competitive class of the civil service law of the state of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.