

OPINION NO. 75-023

Syllabus:

Deputy registrars of the Bureau of Motor Vehicles are included, not in the classified, but in the unclassified civil service of the state.

To: Curtis Andrews, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, March 27, 1975

The request of your predecessor for my opinion reads in part as follows:

"I hereby request a formal opinion regarding the appointment of deputy registrars by the Registrar of Motor Vehicles.

"The question is in Section 4501.02 of the Ohio Revised Code - that the Registrar may, with the approval of the Director of Highway Safety, appoint such number of assistants, deputies, clerks, stenographers, and other employees as are necessary to carry out such laws.

"Would this Section allow the deputy registrars to be considered in the classified service in the State of Ohio?"

The Section to which you refer, R.C. 4501.02, specifies the duties of the Registrar of Motor Vehicles and authorizes him to appoint such deputies as are necessary to enable him to perform his duties. In part it provides:

" * * * * * " * * * * * " * * * * "

"The registrar shall administer the laws of the state relative to the registration of and certificates of title for motor vehicles and the licensing of motor vehicle dealers and salesmen. He may, with the approval of the director of highway safety, adopt and promulgate such forms, rules, and regulations as are necessary to carry out all laws he is required to administer. He may, with the approval of the director, appoint such number of assistants, deputies, clerks, stenographers, and other employees as are necessary to carry out such laws.

" * * * * * " * * * * * " * * * * "

(Emphasis added.)

The duties of the deputy registrars are prescribed by R.C. 4503.03 which provides as follows:

"The registrar of motor vehicles shall designate the county auditor and one or more persons in each county to act as deputy registrars, who shall accept applications for the annual license tax and assign distinctive numbers in the same manner as the registrar. Such deputies shall be located in such municipal corporations in the county as the registrar sees fit. For the purpose of facilitating the distribution of license tags, the registrar may provide for the establishment of branch offices in cities having a population of one hundred thousand or over according to the last federal census.

"The registrar shall assign to each deputy a series of numbers sufficient to supply the demand at all times in such community, and the registrar shall keep a record in his office of the numbers within the series assigned. Each deputy shall be required to give bond, the form and amount of which shall be prescribed by the registrar. The bonds required of deputy registrars may, in the discretion of the registrar, be individual or schedule bonds, or may be included in any blanket bond coverage carried by the department.

"The deputies shall keep a file of each application and shall register such motor vehicle with the name and address of the owner thereof." (Emphasis added.)

Provision for compensation of the deputy registrars is made in R.C. 4503.10 which reads in part:

* * * * *

"Each deputy registrar shall be allowed a fee of fifty cents, for each application, received by him, which shall be in addition to the license fee and shall be for the purpose of compensating the deputy registrar for his services and the services of such assistants, clerks, stenographers, and other employees, and such office and rental expense, as may be necessary for the proper discharge of his duties in the receiving of applications and the issuing of licenses. Each application for registration shall be signed by the owner.

* * * * *

(Emphasis added.)

Deputy registrars have long been recognized to be state officers who are authorized to exercise some of the sovereign powers which have been committed by statute, to the Registrar.

In Opinion No. 865, Opinions of the Attorney General for 1923, pp. 692, 693, my predecessor said:

* * * * *

The statutes provide the following duties for deputy registrars: They shall accept applications for the annual license tax and assign distinctive numbers; they shall keep and file each application and register such motor vehicles with the name and address of the owner; they shall forward applications, with fee, to the secretary of state; they shall retain a copy of all applications until the first day of April of the following year; they shall issue certificates of registration; they shall receive a list from the secretary of state of all licenses issued in the state. He must give bond for the faithful performance of his duties and act without compensation.

"The deputy registrar of automobiles is officially authorized to accept applications and to issue license tags and certificates of registration to any resident of the state, whether a resident of the county or not. He acts in an independent capacity, with authority to do and perform official acts. He is clothed with some of the sovereign powers of the state to be exercised in the interest of the public, as required by law.

* * * * *

"It is therefore my opinion that a deputy registrar, appointed under the provisions of section 6291-1 [now R.C. 4503.03], is an appointive state officer * * *." (Emphasis added.)

The following year the same Attorney General reaffirmed this position in Opinion No. 2053, Opinions of the Attorney General for 1924, p. 678:

* * * * *

"In a former opinion rendered to Hon. Thad H. Brown, Secretary of State, found in opinions of Attorney General for the year 1923, page 686, it was held that such deputy registrar is an appointive state officer * * *.

* * * * *

See also State, ex rel. Bracker v. Weber, 136 Ohio St. 140, 142-143 (1939); Opinion No. 1667, Opinions of the Attorney General for 1958.

Although numerous criteria have been utilized in determining whether a particular position is a public office or a public employment, the Supreme Court has held in State, ex rel. Landis v. Board of Commissioners, 95 Ohio St. 157, 159 (1917), that:

* * * * *The chief and most decisive characteristic of a public office is determined by the quality of the duties with which the appointee is invested, and

by the fact that such duties are conferred upon the appointee by law. If official duties are prescribed by statute, and their performance involves the exercise of continuing independent, political or governmental functions, then the position is a public office and not an employment."

I think it clear from the foregoing that the deputy registrars are public officers. Under R.C. 4501.02 the Registrar of Motor Vehicles is charged with, among other things, the administration of the laws of the state relative to the annual registration of motor vehicles, and under R.C. 4503.03 the deputy registrars are appointed to exercise that portion of the Registrar's duties. See also Opinion No. 73-104, Opinions of the Attorney General for 1973, and Opinion No. 74-021, Opinions of the Attorney General for 1974.

The civil service of the state is divided into classified and unclassified (R.C. 124.11), and your predecessor asked whether the deputy registrars are included in the classified service. The deputies of principal executive officers are specifically assigned to the unclassified service by R.C. 124.11(A)(9) which includes therein:

"The deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals, or holding a fiduciary relation to such principals. * * *"

The Supreme Court has pointed out that the use of the term "deputy" is not conclusive in determining whether a particular person is properly a member of the unclassified service. In State, ex rel. Emmons v. Lutz, 136 Ohio St. 466, 469 (1936), the Court said:

"* * * it must be clear that a mere title is not at all conclusive. The true test is the duty actually delegated to and performed by an employee. * * *"

See also In re Termination, 40 Ohio St. 2d 107, 113-115 (1974).

In my opinion the deputy registrars are true "deputies" under this test. As has already been shown above, the provisions of the Revised Code delegate to the deputy registrars certain of the duties for which the Registrar of Motor Vehicles is responsible, and these duties are to be performed by the deputy registrars. Moreover, they are required to post bond for the performance of their duties, and, unlike the officers and employees in the classified service, they receive their compensation in the form of fees, instead of in accordance with the pay ranges set forth in R.C. 124.14 and R.C. 124.15. Deputy registrars bear much more resemblance to the contract agents of the Department of Liquor Control (R.C. 4301.17, Ice Cream Co. v. Department of Liquor Control, 154 Ohio St. 357, 361-362 (1950), Opinion No. 5070, Opinions of the Attorney General for 1935), than they do to those officers and employees who are included in the classified service of the state.

In specific answer to your predecessor's question it is my opinion, and you are so advised, that deputy registrars of the Bureau of Motor Vehicles are included, not in the classified, but in the unclassified civil service of the state.