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1. MINE INSPECTOR, SECOND CLASS DEPUTY — RECOMMENDED BY CHIEF, DIVISION OF MINES — PROMOTION TO FIRST CLASS DEPUTY MINE INSPECTOR — EXAMINATION — UPON PASSING, CLASSIFICATION, CERTIFICATION TO CIVIL SERVICE COMMISSION, SHOULD BE PAID SALARY, \$3600.00 PER ANNUM.
2. IF NOT SO PAID, ENTITLED TO BE PAID DIFFERENCE BETWEEN WHAT HE ACTUALLY RECEIVED AND WHAT HE WOULD HAVE RECEIVED AT RATE, \$3600.00 PER ANNUM.

SYLLABUS:

1. A Second Class Deputy Mine Inspector who is recommended by the Chief, Division of Mines, for promotion to First Class Deputy Mine Inspector and who passes the examination given by the Mine Examining Board to determine his qualifications and fitness for promotion should, upon the passing of such examination, be classified by the Mine Examining Board as a First Class Deputy Mine Inspector. When such classification is made by the Mine Examining Board and certified to the Chief, Division of Mines, and the Civil Service Commission, such Inspector is a First Class Deputy Mine Inspector and should be paid a salary at the rate of \$3600 per annum.

2. If, after such classification and certification by the Mine Examining Board, such Inspector is not paid at the rate of \$3600 per annum but is paid at the rate of \$3200 per annum, he is entitled to be paid the difference between what he actually received and what he would have received at the rate of \$3600 per annum.

Columbus, Ohio, February 11, 1944

Hon. Joseph T. Ferguson, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This office is in receipt of Voucher No. 2435, dated December 6, 1943, from the Department of Industrial Relations, Division of Mines, which states, in part:

‘The following men having qualified other requirements necessary under Section 898-19 of the Mine Law to become 1st. Class Deputy Mine Inspectors, receive an increase from \$3200 to \$3600 a year retroactive from May 1 to Dec. 31, 1943.’

The voucher purports to pay to each Inspector the gross sum of \$266.64, or \$33.33 per month for the above period. During this said period, however, this office has been receiving payroll vouchers carrying the names of the above Inspectors as Second Class Deputy Inspectors at the rate of pay of \$3200 per year. Pursuant thereto, warrants were issued for each pay period.

We are enclosing herewith a copy of the minutes of the Mine Examining Board submitted to this office in reference to the promotion of the Inspectors from Second Class Deputies to First Class Deputies. It appears from a review of these minutes that the examination papers of the Deputy Inspectors were graded by the Mine Examining Board in April, 1943, and under date of April 24, 1943, they certified the names of the men noted on the payroll voucher as being qualified for the position of First Class Deputy Mine Inspectors.

In view of the provisions of Article II, paragraph 29, of the Constitution of Ohio, we respectfully request your opinion as to whether or not the said voucher represents a valid claim for the payment of the increased salary covering the period from May 1 to December 31, 1943.”

Section 898-18, General Code, provides in part:

“The board shall, within ninety (90) days after its organization, establish two separate classifications for deputy mine inspectors, to-wit:

(1) That of first class deputy mine inspector who shall receive a salary of \$3,600.00 per annum.

(2) That of second class deputy mine inspector who shall receive a salary of from \$2,800.00 to \$3,200.00 per annum. * * *

All deputy mine inspectors in service upon the effective date of this act shall be classified as second class deputy mine inspectors.

In determining the various classifications herein, provided for the board shall consider the nature and classes of the

mines in the various districts, the methods and manner of operating the same, the equipment used therein and such other conditions as it deems advisable.

The board shall adopt suitable rules, regulations and qualifications to determine the manner and method of promotion of the deputy mine inspectors to the various classifications. In determining an incumbent's qualifications for promotion the board shall consider the years of service, the nature of his duties, his ability and efficiency and the various experience of the inspector. The board shall provide for and conduct examinations for the various classifications.

The chief, division of mines, may from time to time recommend deputy mine inspectors for promotion to a higher classification and salary. Upon his doing so the board shall cause the inspector recommended to take an examination to determine his qualifications and fitness for promotion, and upon passing such examination the board shall place him under the classification to which he was recommended for promotion by the chief, division of mines. * * * "

It appears from the copy of the minutes of the Mine Examining Board, which you submitted with your letter, that on the 23rd day of April, 1943, the Mine Examining Board completed grading examination papers of candidates for promotion to First Class Deputy Mine Inspectors, and that on the 24th day of April, 1943, the Mine Examining Board certified to the Civil Service Commission of Ohio and to the Chief, Division of Mines, the names of twelve men as being qualified for the position of First Class Deputy Mine Inspector. You will note that the above quoted section provides that the Chief, Division of Mines, may recommend from time to time Deputy Mine Inspectors for promotion to a higher classification and salary, and that when he does so, the Board shall cause such an Inspector to take an examination to determine his qualifications and fitness for promotion. The section further directs that if such candidate passes the examination, the Board shall place him under the classification to which he was recommended for promotion by the Chief, Division of Mines.

I assume, therefore, that the various men who took the examination were recommended by the Chief, Division of Mines, for promotion to the classification of First Class Deputy Mine Inspectors, and that the examination was given pursuant to the mandate of the statute providing therefor in the case of such recommendation. It is expressly provided in the statute that under such circumstances those persons recommended by the Chief, Division of Mines, who pass the examination

shall be placed by the Board under the classification to which they were recommended for promotion. Pursuant to this authority conferred upon it by the statute, the Board classified the twelve men in question as First Class Deputy Mine Inspectors on the 24th day of April, 1943, and so notified the Chief, Division of Mines, and the Civil Service Commission.

After such classification and notice by the Board, these twelve men were First Class Deputy Mine Inspectors and were entitled to be paid the salary provided by law for such classification, to wit, \$3600 per annum. However, due to some error, these men continued to be paid at the rate of \$3200 per annum as if they were classified as Second Class Deputy Mine Inspectors. Apparently, this error has since been discovered and it is now sought to rectify the mistake which was made and to pay these men the difference between what they would have received on the basis of \$3600 per annum and what they actually received.

Section 29 of Article II of the Constitution of the State of Ohio, to which you refer, provides:

“No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.”

This language, in my opinion, does not prohibit the payment of the claims represented by the voucher in question. It is not sought to pay these men any “extra compensation” after they have rendered their services. It is only sought to pay them at the rate provided by law at the time the services were rendered. The word “extra” implies something in addition to that provided for by law at the time the services were rendered and, as has been noted, it is now sought only to pay these men at the rate established by statute for First Class Deputy Mine Inspectors.

You are therefore advised that upon the facts which you have

submitted there appears to be no legal reason why you should not draw your warrants pursuant to the voucher in question.

Respectfully,

THOMAS J. HERBERT
Attorney General