

of the compensation, this one-half of the compensation of each county commissioner upon the allowance of the joint board of county commissioners should, in the first instance, be paid out of the general ditch fund of the county where the petition was filed.

Respectfully,
C. C. CRABBE,
Attorney General.

1298.

CIVIL SERVICE—SUPERINTENDENT OF PARKS MAY BE EXEMPTED
FROM CLASSIFIED SERVICE—SECTION 486-8 G. C. CONSTRUED.

SYLLABUS:

The position of Superintendent of Parks may be exempted from the classified service on the grounds that such an employe is an assistant within the meaning of sub-section 8 of section 486-8 of the General Code.

COLUMBUS, OHIO, March 24, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my official opinion upon the following statement of facts:

“Section 486-8 General Code of Ohio provides for the classified and unclassified service in the state and various political subdivisions thereof. In Opinion No. 371 to be found at page 1007 of the Annual Reports for 1917, it was held that:

“The health officer appointed by the municipal board of health is an ‘assistant’ to such board, and may be selected as exempt from the classified civil service under paragraph ‘8’ of section 8 of the civil service law.”

The bureau has been requested for advice as follows:

“Does the position of superintendent of parks come under civil service exclusively?”

This question was submitted by the President of the City Park and Recreation Commission of the city of Canton, Ohio.”

Section 486-8 G. C., which relates to the classified and unclassified service of the state in so far as your inquiry is concerned provides:

“(a) The unclassified service shall comprise the following positions which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. * * *

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistant or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.”

Sections 4053 to 4065 inclusive, of the General Code, relate to the establishment of a board of park commissioners.

Section 4057 G. C., which relates to the duties of such commissioners provides:

“The board of park commissioners shall have the control and management of parks, park entrances, parkways, boulevards and connecting viaducts and subways, children’s playgrounds, public baths and stations of public comfort located in such parks, of all improvements thereon and the acquisition, construction, repair and maintenance thereof. The board shall exercise exclusively all the powers and perform all the duties, in regard to such property, vested in and imposed upon the director of public service.”

Section 4061 G. C., which relates to the employees of such board provides:

“The board may employ a secretary, general superintendent, engineer, clerks and such other necessary employes for carrying into effect the purposes of its creation, and shall fix the rate of compensation and term of service of its employes.”

Of course, the sole question presented is whether a superintendent of parks as referred to in your communication and authorized by section 4061, is an assistant within the meaning of sub-section 486-8.

As pointed out in your communication the Attorney General has held that the health officer appointed by the municipal board of health is an “assistant” within the meaning of said section. In reference to what constitutes an assistant in view of the statute under consideration in that opinion the following was said:

“An assistant is one who assists, and an assistant of an officer is one who would assist such officer in the prosecution of the duties of his office. In like manner, an assistant of a board would be one who assists such board in the prosecution of its lawful duties. The assistant may not possess all the powers or have all the authority or fulfill all the requirements of his principal. This is especially true of a board, as no one but the board, properly speaking, can do the things done by it in the sense or in the manner in which it does them itself. The board acts as a body through its members and by resolutions or motions spread upon its minutes and adopted by a majority of its members in accordance with law and with lawful and proper by-laws. This is true of every organization known as a board and inasmuch as the statutes permit such board to have an assistant, it follows that the assistant must do different things and act in a different manner from the board itself, which things, however, must be confined to the objects of the existence of the board. Such objects in the case of a board of health are universally known, and the health officer and the sanitary policeman are chosen by the board, under power given them by statute to select and employ them for the purpose of carrying out the duties of the board.

The health officer undoubtedly comes within the above description of an ‘assistant.’ He acts largely in an advisory capacity to the board; is generally, although not universally, a doctor; and is in respect to some matters, and in a varying degree as to different boards and different circumstances, practically almost independent in his authority in furthering the purposes for which the board exists. He stands in a confidential relation to them, and in every view and for every reason is in as high a degree as ‘assistant’ as it is possible for a board to have.”

It will be noted, however, that the Attorney General in said opinion reached a different conclusion as to a sanitary policeman. However, without discussing the exception that was made it is my opinion that by analogy the holding in reference to the health officer would be applicable to a superintendent of parks. It will be obvious that the duty of controlling, managing and supervising parks rests upon the park commissioners. A superintendent evidently would assist the board in performance of its duties.

Therefore, in specific answer to your inquiry you are advised that the position of superintendent of parks may be exempted from the classified service on the grounds that such an employe is an assistant within the meaning of sub-section 8 of section 486-8 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney General.

1302.

APPROVAL, LEASE, MIAMI AND ERIE CANAL LANDS, PIQUA, OHIO.

COLUMBUS, OHIO, March 24, 1924.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I have your letter of March 7, 1924, in which you enclosed, among others, the following lease, in triplicate, for my approval:

MIAMI AND ERIE CANAL LANDS

To J. O. and Mary B. Bobb, site for Gasoline Filling Station, Piqua, Ohio Valuation
\$8,333 33

I have carefully examined said lease, find it correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
C. C. CRABBE,
Attorney General.

1303.

APPROVAL, FORM OF LEASE, WHICH IS TO GRANT ON BEHALF OF THE STATE THE USE OF CERTAIN LANDS THEREIN DESCRIBED TO THE UNITED STATES GOVERNMENT SITUATED IN OTTAWA COUNTY.

COLUMBUS, OHIO, March 26, 1924.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a form of lease, the purpose of which is to grant on behalf of the state the use of certain lands therein described