

2815.

CIVIL SERVICE—EMPLOYES OF BOARD OF PARK COMMISSIONERS WITHIN CLASSIFIED CIVIL SERVICE OF CITY—EXCEPTIONS.

*SYLLABUS:*

*Employees of a board of park commissioners created by virtue of sections 4053, et seq., General Code, are within the classified civil service of such city. By virtue of paragraph 8 of subdivision (a) of section 486-8, General Code, two secretaries, assistants or clerks and one personal stenographer of such board may be claimed as personal exemptions subject to rules or regulations applicable thereto.*

COLUMBUS, OHIO, June 12, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion upon the following questions:

“Are the employes of a park commission created under the provisions of section 4053 G. C., in the classified service of a city?”

Sections 4053 to 4063, inclusive, General Code, relate to the establishment of a board of park commissioners. Section 4054, General Code, provides for the appointment by the mayor of three electors of a city as members of the board. Section 4057, General Code, relating to the duties of such commissioners, reads as follows:

“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, General Code, reads as follows:

“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.”

Your question relates to whether or not persons employed by virtue of section 4061, supra, are within the classified civil service of the city.

Section 486-8, General Code, reads in part as follows:

“The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(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.

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8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants 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.

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12. \*\*\*and such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service; provided, that such exemptions shall be by order of the commission, duly entered on the record of the commission with the reasons for each such exemption.

(b) The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service to be designated as the competitive class and the unskilled labor class."

I call your attention to an opinion to be found in Opinions of the Attorney General for 1924, page 145. The syllabus of this opinion reads as follows:

"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."

The above opinion merely holds that the board of park commissioners is a principal appointive board within the meaning of paragraph 8 of subdivision (a) of section 486-8, and that therefore the superintendent could be exempted from the classified civil service and placed in the unclassified civil service by virtue of the above provision in the civil service laws. Clearly, all the employes of the park commission may not be so exempted by virtue of the fact that such board is a principal appointive board. Such exemption is limited to two secretaries, assistants or clerks and one principal stenographer. Of course, under paragraph 12 of subdivision (a) of section 486-8, supra, the state or municipal commission may find it impracticable to include in the competitive classified civil service various unskilled labor positions. However, it cannot be said as a matter of law, that the merit or fitness of employes of a park board cannot be determined by an examination. The duties of employes of a park commission do not cause such employes, in my judgment, to fall within the definition of any of the twelve groups that are placed in the unclassified civil service. As before stated, I assume in the rendition of this opinion that the employes in question have not been found to be within the unskilled positions which the municipal civil service commission might place in the unclassified civil service by virtue of paragraph 12 of subdivision (a) of section 486-8.

Without further extending this discussion, it is my opinion, in specific answer to your question, that employes of a board of park commissioners created by virtue of sections 4053, et seq., General Code, are within the classified civil service of such city. By virtue of paragraph 8 of subdivision (a) of section 486-8, General Code, two secretaries, assistants or clerks and one personal stenographer of such board may be claimed as personal exemptions subject to rules or regulations applicable thereto.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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2816.

CORRECTION OF ERROR IN DEED EXECUTED BY GOVERNOR  
TO RUTH M. McCARRELL OF LIBERTY TOWNSHIP, FAIR-  
FIELD COUNTY, OHIO.

COLUMBUS, OHIO, June 12, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Recently Robert L. McCarrell and Ruth M. McCarrell of Liberty Township, Fairfield County, Ohio, acting through their attorney, James T. Pickering of Lancaster, Ohio, made application to this office for a finding which, under the provisions of section 8528, General Code, would authorize the Governor to execute on behalf of the state a deed to the applicants correcting an error in a deed made by Governor Robert Lucas to one Frederick Soliday under date of April 9, 1835, and by which deed it was intended to convey to Frederick Soliday the east half of the southwest quarter of section 15, township 16 and range 19, Fairfield County, Ohio, containing eighty acres, a part of which tract of land is now held and possessed by said Robert L. and Ruth M. McCarrell, who have made this application.

Upon the facts noted and described in my opinion to you upon the application of Artamisha R. Breitenstein, I had no difficulty in reaching the conclusion that an error had, in fact, been made in the original deed of Governor Lucas to Frederick Soliday, in this that although it was thereby intended to convey to Frederick Soliday, as assignee of one William Fisher who had theretofore purchased the land, the east half of the southwest quarter of section 15, township 16, range 19, the tract of land intended to be conveyed was described in the deed as the east half of the southeast quarter of said section, township and range. It is noted in the other opinion above referred to that Artamisha R. Breitenstein, claiming under mesne conveyance back to Frederick Soliday, now holds and possesses the east half of the east half of the southeast quarter of said section 15, and that by reason of this fact she was entitled, under the provisions of sections 8528 and 8529, General Code, to a deed from the Governor correcting the error in the description of the property intended to be conveyed in and by the deed executed by Governor Lucas.