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HEALTH, DEPARTMENT OF—MAY ABOLISH SUCH POSITIONS AS PUBLIC HEALTH SANITARIANS, PUBLIC HEALTH NURSES, CLERKS, PART TIME PHYSICIANS AND CLINICIANS—PLANS PRESENTED AND APPROVED BY SURGEON GENERAL OF PUBLIC HEALTH SERVICE.

SYLLABUS:

The Department of Health may, in accordance with the plans presented by it and approved by the Surgeon General of the Public Health Service, abolish such positions as public health sanitarians, public health nurses, clerks, part-time physicians and clinicians.

Columbus, Ohio, June 6, 1950

Dr. John D. Porterfield, Director of Health
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The Ohio Department of Health receives from various federal agencies grant-in-aid funds for the purpose of providing assistance to local health departments in this state.

"During the present federal fiscal year we will receive approximately $1,250,000.00, of which $250,000.00 will be used for the employment of personnel in the central office. Approximately $1,000,000.00 will be used for the employment of public health sanitarians, public health nurses, and clerks, who are assigned to local health departments.

"For obvious reasons the employment of personnel by this Department, for assignment to local health departments, is too costly and impractical. Therefore, beginning July 1, 1950, the Ohio Department of Health is planning to distribute federal grant-in-aid funds to the local health departments that qualify to receive such funds on the basis of a formula, to be adopted by the Director of Health.

"In order for a local health department to become eligible to participate in federal grant-in-aid funds, it will be necessary for the local board of health to employ, from local funds, a full-time health commissioner, public health nurse, public health sanitarian, and clerk. It is conservatively estimated that approximately 70 of the 203 statutory health districts in this state will qualify under these standards and will, therefore, be eligible to receive federal grant-in-aid funds.

"During the past year we have employed 330 public health sanitarians, public health nurses, clerks, part-time physicians, and clinicians, pursuant to the provisions of the Ohio Civil Service Law, who have been assigned to local health departments. It is planned to abolish these positions as of June 30, 1950, with the hope that local boards of health will re-employ these people using federal grant-in-aid funds provided through this Department.

"I should like to have your opinion on the following two questions:

"1. Can these positions be abolished under the provisions of the Civil Service Law for the reason of *lack of work?*

"2. If such positions are abolished for *lack of work,* would an action lie to compel this department to reinstate such employes if they were not re-employed by local boards of health?"

The above request was later revised and questions restated to comply with the factual situation confronting your department. The question before me now reads:

"Can the positions referred to in my request for your opinion dated March 27, 1950, be abolished as a result of a change in departmental policy with respect to the allocation of federal funds to local areas—such change being predicated on the fact that present procedures are too costly and unsatisfactory?"

The authority of the Department of Health to participate in federal grant-in-aid funds is found in the Appropriation Act of the 98th General

Assembly, Amended House Bill No. 654, wherein, under the title Department of Health, there is found Item I Rotary, which provides as follows:

> "All moneys received from the United States government for maternal and child welfare programs, public health activities under the terms and provisions of the social security act, emergency maternity and infant care services, communicable disease control programs, chronic disease control programs, industrial hygiene control programs, water and air pollution control programs, and for services provided pursuant to contracts with federal agencies and paid into the state treasury are hereby appropriated to the state department of health for the purposes of such grants, allotments, or services rendered. The state department of health shall not make or enforce any rule or regulation governing or controlling the expenditure or disbursement of moneys herein appropriated unless specifically authorized by federal statutes or the statutes of this state. The department, in adopting or enforcing rules or regulations authorized by federal statutes or the statutes of this state, shall comply with the provisions of section 161-1 of the General Code prescribing the manner in which a state agency may adopt and enforce rules and regulations."

It must be observed that pursuant to Amended House Bill No. 654, supra, the Department of Health is charged with the duty of conforming with the provisions of the social security act. An examination of the portion of the federal social security act dealing with local health services, and codified as Title 42, §802, of the Code of Laws of the United States, reveals that:

> "(a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601 (§801 of this title); and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.
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> "(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.
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> "(c) Prior to the beginning of each quarter of the fiscal

year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to the audit or settlement by the General Accounting Office, pay in accordance with such certification.

"(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in Section 601 (§801 of this title), and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service. (Aug. 14, 1935, c. 531, Title VI, §602, 49 Stat. 634.)"

I am well aware of Opinions of the Attorney General for 1944, Opinion No. 7353, p. 736, wherein it was held:

"Persons employed by the Director of Health of the State of Ohio and assigned to work in local health districts of this State and paid by the Department of Health with State funds originating in a Federal grant under Title VI of the Social Security Act, are within the classified civil service of the State of Ohio."

Your attention, however, is directed to the case of State ex rel. Buckman v. Munson, 141 O. S. 319, the syllabus of which reads as follows:

"1. The fundamental purpose of civil service laws and rules is to assure appointments and promotions in the public service based upon merit and fitness and to safeguard appointees in the classified service against unjust charges of misconduct or inefficiency and from being unjustly discriminated against for religious or political reasons or affiliations.

"2. Such provisions, however, do not restrict public authorities in their *bona fide* efforts to effect necessary and desirable economies, or to prevent the laying off of an unessential employe for reasons of economy. (Curtis, Safety Dir., v. State, ex rel. Morgan, 108 Ohio St., 292, approved and followed.)

"3. The issuance of a writ of mandamus to compel the reinstatement of an employe to a position in the classified service, from which he had been laid off for reasons of economy only, is not warranted where there is no challenge of the accuracy of the statement of the appointing officer indicating that the layoff

> was prompted by the necessities of economy, no charge of subterfuge or discrimination and no claim that the order of layoff complained of was actuated by any motive or based upon any reason or for any purpose other than that specified."

In view of the foregoing, it is my opinion that the Department of Health may, in accordance with the plans presented by it and approved by the Surgeon General of the Public Health Service, abolish such positions as public health sanitarians, public health nurses, clerks, part-time physicians and clinicians.

Respectfully,

HERBERT S. DUFFY,
Attorney General.