

the property owners as I have indicated to be necessary in the case of the establishment of a new or the changing of an existing road.

In stating my conclusions as aforesaid, I agree with you that Section 1189, supra, is in many ways defective, especially in not making more specific provision as to the persons to whom notice should be mailed and providing the time in which an appeal should be effected and the procedure for such an appeal.

As we learn the defects of this law from experience, these matters should be properly presented to the next Legislature for correction.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1787.

APPROVAL, 6 GAME REFUGE LEASES.

COLUMBUS, OHIO, February 29, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval:

<i>No.</i>	<i>Name</i>	<i>Acres</i>
1079	Robert C. M. Lewis, Marion County, Marion Township-----	121
1080	Leonard B. Hopkins, Marion County, Pleasant Township-----	223
1081	Samuel E. Hopkins, Marion County, Pleasant Township-----	100
1082	John Gounflo, Marion County, Pleasant Township-----	84
1083	N. E. Barnhart, Marion County, Pleasant Township-----	117
1084	John Dunbar, Marion County, Pleasant Township-----	50

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1788.

CIVIL SERVICE—EMPLOYEE REMOVED AND UPON REVIEW REINSTATED—ENTITLED TO SALARY DURING REMOVAL PERIOD.

SYLLABUS:

An officer, employe or subordinate in the classified service of the state, who is removed from his position by his appointing authority for cause or causes enumerated in Section 486-17a, General Code, and who, as therein provided, appeals to the Civil Service Commission, which, upon hearing, disaffirms the judgment of the appointing authority and reinstates such officer, employe or subordinate to the position from which he

was removed, is entitled to the payment of such salary that accrued during the period such officer, employe or subordinate was so removed from his position.

COLUMBUS, OHIO, February 29, 1928.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter dated February 17, 1928, which reads as follows:

“On March 28, 1927, H. S. was appointed as a guard at the Ohio Penitentiary at a salary of \$100.00 per month. On April 16, 1927, this employee was dismissed ‘for conduct unbecoming a guard at this institution.’ Mr. S. appealed his case to the State Civil Service Commission and was given a hearing. The following sets forth the action of the Commission in this case:

‘Mr. P. E. Thomas, Warden,
Ohio Penitentiary,
Columbus, Ohio.

Dear Sir:

This Commission, after careful consideration of the evidence adduced in the hearing of Mr. H. B. S. from your order of removal discharging him from the position of guard at the Ohio Penitentiary, disaffirmed the order of removal and directed that Mr. S. be reinstated to the position of guard.

Yours very truly,

THE STATE CIVIL SERVICE COMMISSION,

By O. M. Bailey, Acting Secretary.’

We respectfully request your opinion as to whether or not this employee is entitled to his salary during the period of suspension, that is, from the date of his dismissal to the date of his return to duty following his reinstatement by the State Civil Service Commission.”

Your attention is directed to Section 486-17a, General Code, which, in so far as pertinent, provides:

“The tenure of every officer, employe or subordinate in the classified service of the state, * * * holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office. In all cases of removal the appointing authority shall furnish such employe or subordinate with a copy of the order of removal and his reasons for the same, and give such officer, employe or subordinate a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employe or subordinate shall be filed with the commission. Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be, within ten days from and after the date of such removal, in which event the commission shall forthwith notify the appointing authority and shall hear, or

appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm or modify the judgment of the appointing authority, and the commission's decision shall be final; * * * "

Your attention is directed to the case of *State ex rel. Brittain vs. Board of Agriculture*, 95 O. S. 276, wherein on page 283, the Court said:

"The purpose of the civil service law is to continue in position those who are efficient, faithful and trustworthy. By force of the provisions of the section we have quoted (Section 486-17a, supra,) the relator was entitled to hold his position during good behavior and efficient service."

And on pages 284 and 285 thereof:

"An employe 'so removed'—that is, one who has been removed upon one of the grounds set out in the statute, and to whom has been furnished a copy of the order and the reasons therefor, that he may make and file an explanation with the appointing authority if he sees fit, and, as we view it, afford the appointing authority an opportunity to reconsider the order if the explanation warrants it—may appeal to the state or municipal commission within ten days from and after the date of removal. After notice to the appointing authority the commission shall hear or appoint a trial board to hear such appeal within the time fixed by the statute, and may affirm, disaffirm or modify the judgment of the appointing authority.

* * * * *

We are of the opinion that the commission is, in the hearing of an appeal, confined to a consideration and determination of the truth of the charge or charges of delinquency upon which the order of removal is based and of which the employe has been advised. The state commission under the provisions of the statute is not the removing authority. It is to hear the appeal and is to 'affirm, disaffirm or modify the judgment of the appointing authority.' It is to determine whether the judgment of the appointing authority in removing the employe upon the charge set out in the order is correct, that is, whether the statutory ground upon which the order is based in fact exists."

In answer to the question that you present, your attention is directed to the case of *State ex rel. Bay vs. Witter, Director of Department of Industrial Relations, et al.*, 110 O. S. 216, decided April 22, 1924. This was an action in mandamus wherein the relator sought to compel the Director of Industrial Relations to allow payment of salary from July 1, 1923, to August 21, 1923, the date of the abolishment of the office of special medical examiner for the Industrial Commission of Ohio, which position relator had previously been filling and from which he had been removed by the Director of Industrial Relations. In an opinion *per curiam* the Court, on page 223, used the following language:

" * * * the appeal and hearing upon the removal having resulted favorably to relator, and relator having been reinstated by the civil service commission, it follows that relator is entitled to the relief prayed for."

In other words the Court held that since the order of removal was disaffirmed by the Civil Service Commission after a hearing he was entitled to his salary as claimed.

It is well settled in Ohio that one within the classified service who is wrongfully deprived of his employment or position by reason of an absolutely void or illegal

ouster may be restored to his employment or position and the emoluments thereof in an action by way of mandamus. To this effect see:

State ex rel. Moyer vs. Baldwin, 77 O. S. 532; *City of Cleveland vs. Luitner*, 92 O. S. 493; *Hornberger vs. State ex rel. Fischer*, 95 O. S. 148; *State ex rel. Brittain vs. Board of Agriculture*, supra; *Curtis vs. State ex rel. Morgan*, 108 O. S. 292; *City of Toledo vs. Osborn*, 23 O. App. 62.

Specifically answering the question that you present it is my opinion that the employe in question, having been reinstated by the Civil Service Commission, is entitled to his salary that accrued during the period of his removal, that is, from the date of his dismissal to the date of reinstatement by the Civil Service Commission. In other words, it is my opinion that an officer, employe or subordinate in the classified service of the state, who is removed from his position by his appointing authority for cause or causes enumerated in Section 486-17a, General Code, and who, as therein provided, appeals to the Civil Service Commission, which, upon hearing, disaffirms the judgment of the appointing authority and reinstates such officer, employe or subordinate to the position from which he was removed, is entitled to the payment of such salary that accrued during the period such officer, employe or subordinate was so removed from his position.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1789.

APPROVAL, BONDS OF THE VILLAGE OF GENEVA-ON-THE-LAKE,
ASHTABULA COUNTY—\$4,000.00.

COLUMBUS, OHIO, March 1, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1790.

APPROVAL, 14 GAME REFUGE LEASES.

COLUMBUS, OHIO, March 1, 1928.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date in which you enclose the following Game Refuge Leases, in duplicate, for my approval: