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CLASSIFIED CIVIL SERVICE, STATE OF OHIO — PERSONS EMPLOYED BY DIRECTOR OF HEALTH — PAID BY DEPARTMENT OF HEALTH WITH STATE FUNDS ORIGINATING IN FEDERAL GRANT UNDER TITLE VI, SOCIAL SECURITY ACT — ASSIGNED TO WORK IN LOCAL HEALTH DISTRICTS — WITHIN CLASSIFIED CIVIL SERVICE OF STATE.

SYLLABUS:

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.

Columbus, Ohio January 4, 1945

Miss Gertrude Jones, Chairman, Civil Service Commission of Ohio
Columbus, Ohio

Dear Miss Jones:

I have before me your letter in which you ask if certain persons doing work for the various local health districts in the State of Ohio should be considered included within the classified civil service of the state. The facts upon which the opinion is asked are gathered in part from a communication to you from the acting director of health of the state, which you have attached to your letter, and in part from information furnished directly to this office by the same person. Those facts are briefly as follows:

The government of the United States grants funds to the State of Ohio under Title VI of Act No. 271 of the 74th Congress, the Social Security Act. By the use of those funds the Director of Health of the State of Ohio appoints persons, such as nurses and sanitary engineers who are assigned to work with and to assist various local health districts of the state.

In making the appointments the Director of Health usually ap-

points persons who are recommended by those in charge of the government of the local health districts. The persons appointed are controlled solely by the Director of Health and may be dismissed from service only by him. Such persons are paid for their services by warrants on the Treasurer of State, drawn by the Auditor of State in response to vouchers therefor issued by the Director of Health. In other words, these appointees are paid in exactly the same manner as all state employes.

An examination of the portion of the Federal Social Security Act, properly designated as mentioned above, and codified as Title 42, Section 802 of the code of Laws of the United States, reveals that the grants to the states are made by authority of the following:

“802. State and local Public Health Services.— (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 301 (§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.

(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.

(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 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.)”

The Appropriation Act of the 95th General Assembly, House Bill No. 227, contains the following item under the title Department of Health, designated therein as I Rotary —:

“All moneys received from the United States government for maternal and child welfare and public health work under the terms and provisions of the social security act and paid into the state treasury are hereby appropriated to the State Department of Health for the purposes set forth in said social security act.”

In a publication of the United States Treasury Department entitled “The Public Health Program, under Section 6 of the Social Security Act”, at page 5, I find the following:

“The work to be done within the States under the public health title of the act is not to be performed directly by the Public Health Service, but is to be carried out by and administered under the supervision of the State and local health authorities, under the authority of State and local laws and regulations, in the same manner as the regular activities of such authorities have been performed heretofore. All funds paid to the States become State funds just as if they had been appropriated by the State legislatures. All persons employed on the work within the States and local communities are State or local employees, selected, appointed, and paid by the State or local authorities.”

The above expression of opinion is not of course conclusive, but it does serve to indicate in part the nature of the funds considered with which the employes concerned are paid, and taken together with the provisions of Title VI of the Social Security Act and the portion of House Bill No. 227 quoted above it does show that the funds are in fact state funds once the grant to the State is consummated.

From all of the above, it is possible to conclude that the persons about whom you inquire are employes of the State.

Having so determined, it remains yet to be determined if as state employes those persons are within the classified or unclassified civil service.

Section 486-8, General Code, defines the two branches of the civil service of the State. That section, after a preliminary statement to the effect that the civil service of the State shall be divided into the classified and unclassified service, states that the unclassified service "shall comprise the following positions:" There is then set out in detail the positions and employments which are in the unclassified service. The positions about which you inquire are not included. Subsection (b) of Section 486-8 is in part as follows:

"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."

Since these positions are not specifically mentioned among those making up the unclassified service, it follows that they must fall within the classified service. It matters not that the method of appointment of such employes is unusual or that their employment is in aid of the program of a local health district, or that they are paid from funds originating by Federal grant. It is only of consequence that such persons are in fact state employes not included among those in the unclassified service.

It is therefore my conclusion and opinion that the persons about whom you inquire are within the classified civil service of the State of Ohio.

Respectfully,

THOMAS J. HERBERT

Attorney General