

that a corrected abstract of title obviating the objections above noted may be prepared and submitted to me at an early date.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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STATE CIVIL SERVICE COMMISSION—DESIGNATION CITY
CIVIL SERVICE COMMISSION AS AGENT—DISPOSITION
OF FEES.

SYLLABUS:

When the State Civil Service Commission, under the authority of Section 486-5, General Code, designates the Civil Service Commission of a municipality as its agent for the purpose of conducting examinations for positions in the county civil service, the fees collected from applicants for such positions should be paid into the state treasury to the credit of the general revenue fund and not into the treasury of such municipality.

COLUMBUS, OHIO, September 29, 1937.

*The State Civil Service Commission of Ohio, State Office Building,
Columbus, Ohio.*

GENTLEMEN: I am in receipt of your letter of recent date which is as follows:

“Under the provisions of Section 486-5 of the General Code of Ohio, the State Civil Service Commission has since 1925 designated the Cleveland Civil Service Commission as its agent for the purpose of carrying out the provisions of the Civil Service Laws of Ohio, in all such affairs pertaining to Cuyahoga County.

“Section 486-11 G. C. provides in part that: ‘All fees collected under the provisions of this act shall be paid into the state treasury, to the credit of the general revenue fund, or in the case of cities, into the city treasury.’

“Section 486-1, paragraphs 1 and 2, provides that the state service shall include all such offices and positions in the service

of the state or counties thereof, except the cities and city school districts.

"Prior to February 20, 1936, it has been customary for the city commission to forward to the state commission all fees collected in the administration of county examinations in which such local commission acted as the agent of the state commission, which in turn were paid by this Commission into the state treasury to the credit of the general revenue fund.

"On that date, however, the Assistant Director of Law, Charles W. White, of the City of Cleveland, advised the members of the Cleveland City Civil Service Commission that such fees should be paid into the city treasury regardless of whether or not the service involved is that of a county in which they merely act as our agent. All fees collected subsequent to the receipt of this opinion were paid into the city treasury.

"We are attaching a copy of the opinion of the city law department.

"Will you kindly advise us relative to the proper disposition of such fees for county examinations in view of the existing situation as outlined herein?"

The advice of Charles W. White, Assistant Director of Law, is contained in the following communication:

"To: Civil Service Commission, Feb. 20, 1936.
335 City Hall.

From: Charles W. White,
Assistant Director of Law.

Members of the Commission:

Sometime ago Mr. Mayo Fesler remarked to you that a State Examiner's report for the first three and one-half months of 1935 showed that you had paid to the state treasurer \$1187.00 as fees received for examination in the county and board of education services. He then raised the question whether such fees should not be paid either to the city treasurer as on account of the county's share of the cost of administering civil service or to the county treasurer. It was suggested at the time that the law be re-examined with reference to the question thus raised and an opinion rendered.

The state civil service commission is given the authority to charge fees for examinations by Section 486-11 G. C., as amend-

ed in 1915 (106 O. L. 400, 407). The amendatory act contained this further provision:

'All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.'

The municipal civil service commission exercises jurisdiction over the city school district service by virtue of the express provisions of Section 486-19 G. C.; and with respect to such service it is granted all the power and authority granted to the state commission with respect to the state service, including authority to charge fees for board of education examinations. With respect to the county service the statute, as amended in 1925, empowers the state commission to designate the local commission 'as its agent' for the purpose of carrying out such provisions of the law within the county as the former may designate from time to time. Section 486-5 G. C., (111 O. L. 56).

Mr. Clum has heretofore ruled, in a written opinion to Major Jeffrey, your former Secretary, dated June 9, 1928, that by virtue of the foregoing provision in Section 486-11 G. C., as amended, fees for examinations in the county and city school district services should be paid into the *city treasury*. A copy of that opinion was found in your file, 'Law Department Opinion,' and is attached hereto. There has been no change in the pertinent statutory provisions since that time and I can find no court decision in which the precise question has been adjudicated. Mr. Clum's opinion is, therefore, adhered to and you are advised that all fees for examinations collected by you under the provisions of the Civil Service Act, as amended, should be paid into the city treasury regardless of whether the service involved is the county's or the city school district."

The opinion of Alfred Clum, Assistant Director of Law of the City of Cleveland, referred to above, is as follows:

"City of Cleveland Law Department. June 9, 1928.
Major Elsworth Jeffrey,
Civil Service Commission, City Hall.
Dear Sir:

You have called my attention to Section 486-11 of the General Code of Ohio, with reference to fees collected by the Civil Service Commission, for examinations given by it, and have asked my opinion as to the last sentence in the middle paragraph, which reads:

'All fees collected under the provisions of this act shall be paid into the State Treasury to the credit of the general revenue fund, or in the case of cities, into the City Treasury.'

The Charter of the City of Cleveland is silent on the question of a fee for examinations held by the Civil Service Commission. You tell me that the practice of the Commission has always been to make no charge against applicants for taking examinations for municipal positions.

Section 486-11 specifically specifies the limit of fees which the Civil Service Commission may charge.

While the Civil Service Commission is selected in the manner prescribed by the Charter of the City of Cleveland, it is no less an agency of the State, and the only agency of the State functioning as a Civil Service Commission in Cuyahoga County; it is therefore a part of its duty as a Civil Service Commission to conduct certain examinations for positions under the Board of Education and for certain positions under the control of the County Commissioners.

The question has arisen as to the effect of these various provisions and practices on the statutory provision first above quoted from Section 486-11. It is my opinion that all fees lawfully collected by the Civil Service Commission created by the Charter of the City of Cleveland, should be by that Commission paid to the treasurer of the City of Cleveland, in accordance with Section 486-11 and not otherwise.

The law quoted recognizes the possibility of a Civil Service Commission in a community other than a city, and in that case the fees collected should be paid to the State Treasury to the credit of the general revenue fund; but in cases of a Civil Service Commission in cities, whether charter cities or otherwise, and whether the Civil Service Commission is created solely pursuant to state statutes or pursuant to a charter, the fees for examinations lawfully collected should be paid into the city treasury.

(Signed)

Alfred Clum,
Assistant Director of Law."

The authority given the State Civil Service Commission to designate a City Civil Service Commission as its agent for the purpose of conducting examinations is contained in Section 486-5 of the General Code. The pertinent part of that section is as follows:

"* * * provided, however, that counties of the state in

which are located municipalities having local civil service commissions the state civil service commission may designate the local commission of the largest municipality within such county as its agent, for the purpose of carrying out such provisions of this act within said counties, as the state civil service commission may designate from time to time; * * *

Section 486-11, General Code, reads in part, as follows:

“ * * * All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury. * * *”

The Civil Service Commission of the City of Cleveland has no authority to hold examinations for county positions except the authority delegated to it by the State Civil Service Commission. This being true, there can be no question but that in conducting such examinations it acts solely as agent of the State Civil Service Commission and not in its capacity as the Civil Service Commission of the City of Cleveland. Such acts as it performs as the agent of the State Civil Service Commission, are the acts of the State Civil Service Commission, and while engaged in the performance of such acts it is, in effect, the State Civil Service Commission and is subject to the statutory provisions which prescribe the powers and duties of the State Civil Service Commission. It follows that the last ten words of Section 486-11, above quoted, have no application in cases where the Civil Service Commission of the City of Cleveland acts as the agent of the State Civil Service Commission in conducting examinations for county positions and that the fees received from conducting such examinations should be paid into the state treasury.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

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SALE OF SECURITIES—COMPENSATION AND REMUNERATION—SECTION 8624-6, OHIO GENERAL CODE.

SYLLABUS:

1. *The total commission, remuneration, expense or discount in con-*