

2347.

APPROVAL—BONDS, SOUTH EUCLID-LYNDBURST VILLAGE  
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$2,100.00.  
PART OF ISSUE DATED FEBRUARY 1, 1936.

COLUMBUS, OHIO, April 19, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN :

RE: Bonds of S. Euclid-Lyndhurst Village School  
Dist., Cuyahoga County, Ohio, \$2,100.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated February 1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of March 17, 1936, being Opinion No. 5252.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2348.

OHIO CIVIL SERVICE LAW—POLICE DEPARTMENT—  
PATROLMAN LAID OFF—POSITION ABOLISHED—  
STATUS AS TO REINSTATEMENT—VACANCY—RESIG-  
NATION OF CHIEF.

*SYLLABUS:*

1. *The term "vacancy" in Section 486-17b, General Code, refers to an unfilled position under the same civil service rating as applied to the position which was formerly held by the individual seeking reinstatement.*

2. *The probability of such a vacancy occurring is not sufficient to effectuate the provision for reinstatement; there must be an actual vacancy within the prescribed time limit.*

COLUMBUS, OHIO, April 20, 1938.

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

GENTLEMEN: This will acknowledge your recent request for an opinion involving the following facts:

The Police Department of the City of Girard has consisted of five patrolmen and the Chief of Police. On March 1, 1936, a patrolman was laid off due to the abolishment of that position. His lay-off was in accord with the provisions of Section 486-17b, General Code, wherein it is provided that in the reduction of a police force the youngest member in point of service shall be first laid off and that if a position once abolished be recreated or reestablished within two years from the date of the abolishment of the position, or should a vacancy occur through death, resignation or through any other cause within two years of the date of abolishment of the position or lay-off, the oldest employe in point of service of those laid off shall be entitled to reinstatement on the basis of the vacancy so created.

On February 1, 1938, the Chief of Police resigned. Subsequent to March 1, 1938, the position of Chief of Police was filled by a patrolman of the force as the result of a promotional examination. The former member of the force who was laid off on March 1, 1936, now demands reinstatement as a patrolman, contending that a vacancy occurred in the police department on the first day of February, 1938, when the resignation of the former Chief became effective, and that he is therefore entitled to reinstatement under the provisions of Section 486-17b, General Code.

Section 486-17b, General Code, provides for the reappointment of classified employes such as the patrolman who was laid off on March 1, 1936, in this case. Therein it states in part:

"Should a position in the police or fire department once abolished or made unnecessary be found necessary to be recreated or reestablished within two years from the date of abolishment, or should a vacancy occur through death, resignation, or through any other cause within two years from the date of abolishment of the position or lay off, the oldest employe in point of service of those laid off shall be entitled to same providing he was at the date of his separation a regular and permanent employe."

For our purpose, the term "vacancy," as it stands within this section, refers to a vacancy which the former patrolman was eligible to fill by reason of his former classification. There is no basis for contending that this section contemplates reinstating the former patrolman to any position in the department which might become vacant. The issue is, therefore, whether there was a patrolman's position in this police department which was not filled or occupied by an incumbent during the two-year period immediately following the former patrolman's lay-off on March 1, 1936.

The resignation of the Chief of Police on February 1, 1938, did not create a vacancy in the ranks of the patrolmen. Under the Ohio Civil Service Law, the position of chief of a municipal police department is one which is properly within the competitive classified service. Section 486-15, General Code, provides in part as follows:

"Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The commission shall provide in its rules for keeping a record of efficiency for each employe in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service; and shall provide that vacancies shall be filled by promotion in all cases where, in the judgment of the commission, it shall be for the best interest of the service so to fill such vacancies. All examinations for promotions shall be competitive. \* \* \*"

It is clear that no patrolman on the force automatically became Chief of the department by reason of the resignation of the former Chief on February 1, 1938. Promotion to the rank of Chief was not automatic; it was the result of a subsequent competitive examination. Granting that there was a likelihood that the results of the competitive examination for the position of Chief would result in a promotion of one of the patrolmen, yet it was not until after March 1, 1938, when the results of the examination were determined by the examiners, that the promotion became effective and the vacancy resulting therefrom became an actuality. Until the promotion became effective, every position with respect to patrolmen in the department was filled. If the former patrolman had brought an action in mandamus to enforce his privilege of reinstatement prior to March 1, 1938, what vacancy in the ranks of the patrolmen could he have alleged?

The potentiality of the former patrolman's exercising his privilege of being reinstated under the provisions of Section 486-17b, General

Code, expired on February 28, 1938. At no time prior to that date was there a vacancy in the ranks to which he was entitled to be reinstated. The expectancy or even the probability that such a vacancy would occur as the result of a promotional examination which would advance one of the patrolmen to the rank of Chief did not constitute a vacancy in the ranks of the patrolmen.

Therefore, it is my opinion that the patrolman laid off on March 1, 1936, is not entitled to reinstatement under the provisions of Section 486-17b, General Code.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2349.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH SUPERINTENDENT OF PUBLIC WORKS, WITH JOHN S. ROBINSON, CIRCLEVILLE, OHIO, TERM FIFTEEN YEARS, ANNUAL RENTAL \$6.00, RIGHT TO OCCUPY AND USE FOR WALKWAY AND DRIVEWAY PURPOSES, STRIP OF ABANDONED OHIO CANAL PROPERTY AS DESCRIBED, IN CIRCLEVILLE TOWNSHIP, CIRCLEVILLE, PICKAWAY COUNTY, OHIO.

COLUMBUS, OHIO, April 20, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval a canal land lease in triplicate executed by you in your official capacity as Superintendent of Public Works and as Director of said department to one John S. Robinson of Circleville, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$6.00, there is leased and demised to the lessee above named the right to occupy and use for walkway and driveway purposes a strip of abandoned Ohio Canal property within the limits of the city of Circleville, Circleville Township, Pickaway County, Ohio, that is twenty-five (25') feet, more or less, in width, extending easterly across the state canal property, commencing at Station 4+27.4 of W. C. Sanzenbacher's Survey of said canal north of High Street in said city, and extending thence northerly for a distance