

'The Legislature having plenary power over school districts may provide for the division of the property and the apportionment of debts when a portion of the territory and property of one district is transferred to another. In the absence of such provision the rule of the common law obtains and that rule leaves the property where it is found and the debt on the original debtor.'

It therefore follows that the Geneva Township Rural School District retains all the funds now in its treasury, retains title to the school property lying within its territory and is charged with the payment of all the debts of the original district."

"All the debts of the original district" spoken of above include not only bonded indebtedness but other indebtedness as well.

As there is no authority for boards of education in village school districts, automatically created upon the incorporation of villages, to assume or pay any of the debts of the school district of which their district had formerly been a part, I am of the opinion they are not permitted to do so.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1898.

OHIO STATE DENTAL BOARD—SECRETARY, INSPECTOR AND STENOGRAPHER IN UNCLASSIFIED CIVIL SERVICE—SECTION 486-8, PARAGRAPH 8, GENERAL CODE, CONSTRUED.

*SYLLABUS:*

*The Ohio State Dental Board may appoint persons to the positions of secretary, inspector and stenographer to said board exempt from the classified civil service of the state. The position of secretary to the Ohio State Dental Board is such that it cannot in any view be considered as one in the classified service. As to the other two positions, to wit, those of inspector and stenographer, the dental board, if it desires to exempt said positions and the incumbents thereof from the classified civil service, should designate said positions and incumbents in the unclassified service as authorized by paragraph 8 of Section 486-8, General Code.*

COLUMBUS, OHIO, March 26, 1928.

HON. RAY R. SMITH, *Secretary Ohio State Dental Board, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, reading as follows:

"We are in receipt of a letter from the Civil Service Commission, placing the three salaried officers of this board (the secretary, the stenographer and the inspector) on a civil service basis.

We are desirous of knowing whether or not this includes all three of the above mentioned as specified in the enclosed letter."

In the letter referred to in your communication, which is thereto attached, the State Civil Service Commission, after referring to the payroll of the incumbents

in the positions mentioned in your communication, instructs you to submit such payroll in the future to the office of the State Civil Service Commission for approval before the same is submitted to the disbursing officers of the state, and likewise instructs you to fill out enclosed nomination blanks for provisional appointments for said incumbents.

The questions presented in your communication concern the application of the civil service laws of this state to the positions mentioned in your communication.

Section 1314, General Code, provides that the Governor, with the advice and consent of the Senate, shall appoint a State Dental Board consisting of five persons, each of whom shall be a graduate of a reputable dental college and shall have been in the legal and reputable practice of dentistry in the state at least five years next preceding his appointment.

Section 1315, General Code, provides that the State Dental Board shall organize by electing from its members a president and a secretary. By Section 1316, General Code, it is provided that before entering upon the discharge of the duties of his office the secretary of the State Dental Board shall give a bond to the State in the sum of two thousand dollars, conditioned for the faithful discharge of the duties of his office.

By Section 1317, General Code, provision is made for the per diem compensation and for the necessary expenses of the members of the board. This section further provides that the secretary shall receive an annual salary, to be fixed by the board, and his necessary expenses incurred in the discharge of his official duties; and that the compensation and expenses of the secretary and members and the expense of the board shall be paid from the fund in the state treasury for the use of the board on a requisition signed by the president and secretary of the board, and on the warrant of the Auditor of State. Besides the ordinary duties devolving upon the secretary of a board of this kind, such secretary, under the provisions of Section 1333, General Code, is required to enforce the provisions of the laws relating to the practice of dentistry, and to prosecute offenses against such laws.

There is no statutory authority for the appointment by the Ohio State Dental Board of persons to the positions of inspector and stenographer other than that implied from the sections of the General Code prescribing the duties of the dental board and the secretary thereof, together with the appropriation acts of the Legislature from time to time making appropriations for the salaries for said positions.

Section 10 of Article XV of the State Constitution provides that appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations, and that laws shall be passed providing for the enforcement of this provision. Pursuant to this mandate of the Constitution, the civil service legislation of this state, which has been carried into the General Code as Sections 486-1a to 486-31, inclusive, of the General Code, has been enacted. Section 486-1a, General Code, provides in part as follows:

“1. The term ‘civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

2. The ‘state service’ shall include all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts.

3. The term ‘classified service’ signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof.”

Section 486-8, General Code, provides that the civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service. This section enumerates certain positions which shall not be included in the classified service, and, after making such enumeration in the unclassified service, provides further that 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.

Touching the question presented in your communication, it will be noted that said Section 486-8, General Code, by paragraphs 3 and 8 thereof, enumerates certain positions in the unclassified service, as follows:

"3. The members of all boards and commissions and heads of principal departments, boards and commissions appointed by the governor or by and with his consent; \* \* \*

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8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer."

Wholly aside from the provisions of paragraph 8 of Section 486-8, above quoted, it seems quite clear that the position of secretary to the Ohio State Dental Board is not one within the classified service of the state. Under the provisions of Section 486-13, General Code, permanent appointments to positions in the competitive classified service can only be made from an eligible list which is to be ascertained by competitive examination, which shall be open to all, subject to certain limitations to be determined by the civil service commission as to citizenship, residence, age, sex, experience, health, habits and moral character. As above noted, the members of the State Dental Board are appointed by the Governor, with the advice and consent of the senate; and such appointments are made wholly without reference to the classified civil service of the state or laws relating thereto. Inasmuch as the secretary of the State Dental Board is required to be one of the members of such board, it is obvious that the laws relating to appointments to positions in the classified civil service of the state have no application to said position.

The question of whether the position of inspector of the State Dental Board is one within the classified service of the state depends upon whether such inspector is an assistant as that term is used in paragraph (a) of Section 486-8 of the General Code, above quoted. In an opinion of this department, directed to the State Civil Service Commission, under date of February 4, 1916, (Opinions of the Attorney General for 1916, Volume 1, p. 201), it was held:

"The term 'assistant', as used in paragraph 8 of Section 486-8, General Code, as amended 106 O. L. 405, may include any officer or employe, regardless of his title, who aids and assists his principal in the discharge and performance of duties which are of a confidential and fiduciary character, and which involve the responsibility of the principal."

In the opinion of this department above noted, which was directed, among other things, to the question of whether a probation officer was an "assistant" within the meaning of that term as used in paragraph 8 of Section 486-8, General Code, it is said:

"It must be observed in the first place that the term 'assistant', as used in this statute, cannot be limited to those persons who are so named and denominated by statutory law because such persons are practically all excepted under other provisions of said Section 486-8, obviously, therefore, the Legislature intended it to apply in a more general way, but to give you a definition that would furnish a test in every instance would be an impossibility. This is so because in a certain sense and to some extent all subordinate officers are assistants of their principals. As is very pertinently observed in the case of *State vs. Longfellow*, 69 S. W. 596:

'The word assistant is susceptible of a considerable variety of meanings to be made definite in each case by the aid of the context, the circumstances and other recognized materials of interpretation.'

In view of these considerations, I am of the opinion that the term as used in this statute must be interpreted so as to harmonize with the general spirit and purpose of the civil service law as well as the general character of those positions which, by other provisions of the law, are exempted and excepted from the classified service. If we so construe this term it then must be held to mean something more than a person who aids or assists his principal. It must be one who not only aids and assists his principal, but whose relation to his principal, because of the duties of his position, is one of a confidential or fiduciary character. In other words, the position of assistant as here contemplated means a position of trust and confidence, the duties of which involve, to some extent at least, the responsibility of the principal. When these qualifications are added to the ordinary acceptation of the term it brings it, in my judgment, in harmony with the other provisions of the law relating to exempted positions, and is consistent with the general purpose of the civil service laws.

Therefore, adopting this view of the matter, I must advise that the term 'assistant', as used in said section, may include any officer, regardless of his title, who aids and assists his principal in the discharge and performance of duties which involve the responsibility of the principal, and are of a confidential and fiduciary character.

This being so, I am of the opinion that a probation officer holds such relation to the court which appoints him as to warrant his exemption as an assistant under said provision of the law."

As I understand the facts relating to the duties of the inspector of the Ohio State Dental Board, such duties consist to a large extent in making investigations relating to alleged violations of laws relating to the practice of dentistry, and otherwise assisting the secretary of the board in the conduct of prosecutions for offenses involving the violations of such laws. However, it appears that a very considerable part of his duties relates to investigations made by him with respect to the moral character and other qualifications of applicants for license to practice dentistry, which qualifications are of such nature as cannot be disclosed by the examination of such applicants which said board is required to conduct. Moreover, as I am advised, the duties of such inspector relate to a considerable extent to investigations made by him of the complaints made against persons practicing dentistry under a license theretofore issued by said board, which complaints and investigations thereof made by said inspector have relation to the power and duty of said board to revoke or suspend licenses on the grounds mentioned in Section 1325, General Code. The duties of said inspector in making such investigations and making reports of the same to the Ohio State Dental Board for the use of said board in the discharge of its official duties,

are such in my opinion as constitute him an assistant within the meaning of the term as used in paragraph 8 of Section 486-8, General Code.

Under the provisions of said paragraph 8 of Section 486-8 of the General Code, each of the principal appointive executive officers, boards or commissions, except the civil service commission, is entitled to have one personal stenographer in the unclassified service. Under this provision of said paragraph, there does not seem to be any question with respect to the power of the Ohio State Dental Board to appoint a stenographer exempt from the classified civil service.

By way of specific answer to the questions made in your communication, I am of the opinion that the Ohio State Dental Board may appoint persons to each of the positions therein named exempt from the classified civil service of the state.

The position of secretary to the Ohio State Dental Board is such that it cannot in any view be considered as one in the classified service. However, as to the other two positions here under consideration, to wit, those of inspector and stenographer, the Ohio State Dental Board, if it desires to exempt said positions and the incumbents thereof from the classified civil service, should by communication directed to the State Civil Service Commission, designate said positions and incumbents in the unclassified service as it is authorized to do by paragraph 8 of Section 486-8, General Code.

Since writing the above opinion I am informed by the secretary of the Civil Service Commission that the letter of the commission dated February 27, 1928, which prompted your inquiry was in nowise a notice of any action or attempted action on the part of the commission to place the three positions involved in the classified service. On the other hand, it was merely a request for information to enable the commission to make a survey and to ascertain what if any of the employes of the dental board are or should be in the classified service. I therefore advise that the information desired by the commission should be transmitted to it.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1899.

COUNTY SINKING FUND—INTEREST ARISING OUT OF FUND—DISPOSITION OF INTEREST WHICH HAS NOT BEEN INVESTED BY SINKING FUND TRUSTEES—INTEREST ON BOND PAYMENT FUND OR BOND RETIREMENT FUND.

*SYLLABUS:*

1. *Interest arising out of the investment of monies in the county sinking fund by the trustees of the sinking fund, under authority of Section 2976-21, General Code, should be placed in the county treasury and credited to said sinking fund.*
2. *Interest earned on the deposit of monies in the county sinking fund, which have not been invested by the trustees of the sinking fund under authority of Section 2976-21, General Code, should be credited to the general fund of the county, in accordance with Section 2737, General Code.*