

acting under the preceding sections certified to a board of education the net floating indebtedness of the district, such board of education was compelled, where the net floating indebtedness exceeds \$400.00, to issue bonds or notes in the sum of such indebtedness. The duty to issue such bond existed regardless of whether or not any debt limitations were exceeded thereby, and it is entirely probable that in many instances the issuance of such bonds increased the bonded indebtedness of the districts to sums far in excess of all debt limitations. In view of this fact I believe the conclusion is not unwarranted that the Legislature did not intend that bonds issued under House Bill No. 599 (Sections 5655-1 to 5655-3, inclusive, General Code), should be subject to any debt limitations.

Further sub-section (b) of Section 2293-15, General Code, exempts from all limitations on net indebtedness all bonds issued prior to the going into effect of the Uniform Bond Act *which at the time of issuance were not required by law to fall within any debt limitation*. As pointed out above there is no provision in House Bill No. 599 that bonds or notes issued thereunder should be subject to any debt limitation.

For the foregoing reasons I am of the opinion that bonds issued under House Bill No. 599 are not subject to any debt limitations and therefore fall within the class of bonds referred to in sub-section (b) of Section 2293-15, General Code.

The above leads inevitably to the conclusion that bonds issued under House Bill No. 599 are not within the class of bonds referred to in Section 2293-18, *supra*. That is to say, inasmuch as Section 2293-18 permits the issuance, where the debt limitations have been exceeded, of "bonds falling within the class covered by said limitations" in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness on "bonds of such class" has been reduced during the calendar year, bonds issued under House Bill No. 599 and retired during the calendar year, not being within such class, may not be considered in determining the amount of bonds which may be issued under Section 2293-18, General Code.

There is of course no doubt as to the authority of the board of education in question to issue \$4500.00 of unvoted bonds during the calendar year, this amount being nine-tenths of the amount of unvoted bonds subject to debt limitations retired during said calendar year.

In view of the foregoing, and in specific answer to your question, it is my opinion that bonds issued under House Bill No. 599 of the 85th General Assembly, and retired during a calendar year, may not be considered in determining the amount of bonds which a school district is authorized to issue during said calendar year under the provisions of Section 2293-18, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2803.

CLASSIFIED CIVIL SERVICE—EMPLOYES SEEKING NOMINATION FOR OFFICE AT PRIMARY—GROUNDS FOR REMOVAL BUT NOT FOR WITHHOLDING SALARY—POWER OF COMMISSION TO MAKE INVESTIGATIONS.

SYLLABUS:

1. *Persons in the classified civil service, who become candidates for nomination for office, or for members of a party controlling committee, at a primary election, violate the provisions of the civil service act, and for that reason may be discharged from the service in the manner provided by law.*

2. *The civil service commission may not withhold its approval of that part of the payroll or account for the salary or compensation of a person in the classified civil service, who has become a candidate for nomination for office, or for member of a party controlling committee, at a primary election, except where such person has been removed or suspended by the appointing authority in the manner provided by law.*

3. *A person in the classified civil service may be removed only as provided in Section 486-17a of the General Code.*

4. *The civil service commission may make investigations to ascertain whether or not the civil service law has been violated, and thereafter proceed as authorized in Sections 486-22 and 486-28 of the General Code.*

COLUMBUS, OHIO, October 29, 1928.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

“We are enclosing herewith a copy of a letter from the Citizens League of Cleveland, sent to the Cleveland City Civil Service Commission, regarding certain classified employes who are or have been candidates for elective office.

Your opinion in this matter is respectfully requested in so far as classified employes of Cuyahoga County are concerned. The provisions of Section 486-5, sub-paragraph 3, of the General Code of Ohio provides that: ‘in counties of the state in which are located municipalities having local civil service commissions, the state 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 such counties as the state civil service commission may designate from time to time.’ In accordance with this provision, this Commission designated the Cleveland Civil Service Commission as our agent, for the purpose of carrying out the provisions of the Civil Service Laws of Ohio within Cuyahoga County.”

The letter from the Citizens League of Cleveland, to which you refer, states, in part, that:

“The following employes in the classified service of the county filed their petitions with the board of elections and had their names placed on the ballot for nomination as candidates.”

The letter then sets forth the names of certain employes and the offices for which they were candidates, and states that, in addition to these employes whose names appear on all ballots, other county employes in the classified service, were candidates for election as “precinct committeemen,” their names appearing on the ballots of the respective precincts. The letter gives the names of a number of these employes and further states that:

“In addition to these, there are nineteen employes in the county treasurer’s office, eighteen in the county clerk’s office, and numerous other county employes who are running for precinct committeemen. These employes should all be in the classified service.”

It is also stated in the letter that the names of other persons in the administrative service of the city appeared on the ballot for “precinct committeemen,” and that,

"The commission cannot legally approve the salaries and wages of these persons on the payroll because they have by their own deliberate action separated themselves from the service."

The letter concludes as follows:

"The members of the civil service commission are required by law and by their oaths of office to enforce the civil service laws against political activity as prohibited by the state law and city charter. The Executive Board of the Citizens League, representing 6,000 citizens in Cleveland and Cuyahoga County, respectfully calls upon the commission to take immediate steps to verify the facts in these several cases and proceed at once to enforce the provisions of the state law and city charter which are being willfully and openly violated by these employees."

While, as appears from the excerpts from the letter of the Citizens League above quoted, it is not specifically stated that all the employes here involved were in the classified civil service, I shall so assume for the purpose of this opinion.

No specific questions are asked in your letter, which states that the opinion of this office "in this matter is respectfully requested in so far as classified employes of Cuyahoga County are concerned." Three questions are, however, presented, which may be stated thus:

1. Does it constitute a violation of the civil service law for a person in the classified civil service of a county or city to become a candidate for nomination for office, or for member of a party controlling committee at the primary election?

2. In case employes in the classified civil service become candidates for office or for member of a party controlling committee, may the Civil Service Commission withhold its approval of that part of the payroll upon which the names of such a person appears?

3. What is the power and duty of the Civil Service Commission with reference to making investigations to ascertain whether or not the civil service law has been violated?

1. As to your first question, Section 486-23, General Code, which is plainly applicable, reads as follows:

"No officer, employee or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person, solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employee or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employee in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions." (Italics the writer's.)

It will be noted that this section provides that no employe in the classified service of the county or city shall take part in politics other than to vote as he pleases, and to express freely his public opinion.

In an opinion of one of my predecessors in office, reported in the Annual Report of the Attorney General, 1914, Vol. I, page 509, it was held:

“A person in the classified service under the civil service law cannot be a candidate for office either at a primary or at an election and at the same time retain his position. If he becomes such a candidate it would be cause for removal from the position he holds as he accepts such position upon condition that he will not take part in politics.”

While the position of “precinct committeeman,” as termed in the letter from the Citizens League, is not an office, the same rule would apply. Political parties are managed by a controlling committee called the central committee, the members of which are often referred to as precinct committeemen. The members of such committee manage the affairs of the party, and while so doing are participating in politics, and while participating as members of such committee they are clearly doing more than voting as they please and expressing freely their “political opinions.” Obviously a candidate for such position is taking part in politics.

I agree with the conclusion and opinion quoted above, and it is my opinion that a person in the classified service of the county or municipality may not become a candidate for nomination for public office, or for member of a party controlling committee without violating the provisions of the civil service law.

2. The second question above stated requires the consideration of Section 486-21, General Code, which reads in part as follows:

“After the taking effect of this act it shall be unlawful for the auditor of state, or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employee, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or, in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act and the rules adopted thereunder. * * *”

It will be noted that this provision provides that no salary shall be paid to an officer or employe in the classified service of the state until the proper civil service commission has certified “that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act and the rules adopted thereunder.” Therefore, the civil service commission when inspecting a payroll to determine whether or not it shall be certified, is required to give consideration only to the things enumerated, viz., whether the persons whose names appear thereon, have been appointed, promoted, reduced, suspended, or laid off, or are being employed in pursuance to the provisions of the civil service law. All these matters relate to the manner of employing the appointee. If such employe has been legally employed, the status of the employe continues to exist until changed or terminated as provided in Section 486-17a, General Code, hereinafter quoted. There is no authority found in said section or any other section which authorizes the civil service commission to refrain from approving a

payroll because such commission may be of the opinion that some employe had violated the provisions of the act.

It is no more a violation of the civil service law for an appointee in the classified civil service to be active in politics than it is for such person to be dishonest, immoral, discourteous to the public or incompetent.

In case an employe in the classified civil service violates the provisions of the act he may be removed as provided in Section 486-17a of the General Code, which is as follows:

"The tenure of every officer, employ (employe) or subordinate in the classified service of the state, the counties, cities and city school districts thereof, 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 (G. C., Secs. 486-1 to 486-31) 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; provided, however, that in the case of the removal of a chief of police or chief of the fire department of a municipality an appeal may be had from the decision of the municipal commission to the court of common pleas of the county in which such municipality is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of the commission."

It will be noted that the above section provides that any such employe may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or "violation of the provisions of this act." As pointed out above, becoming a candidate for public office, or for member of a party controlling committee, would be a violation of the civil service act and therefore be grounds for removal. The statute further provides that in all cases of removal the appointing authority shall furnish such removed employe with a copy of the order of removal and the reasons therefor, and give such employe reasonable time in which to make and file an explanation, and that such explanation, if made, shall be filed with the civil service commission. Thereafter such employe may appeal from the removal by the appointing authority to the civil service commission, which commission shall hear such appeal and may affirm or disaffirm or modify the judgment of the appointing officer.

In the case of *State, ex rel. Brittain, vs. The Board of Agriculture of Ohio*, 95 O. S. 276, the Supreme Court of Ohio held:

“The provision of Section 486-17a, General Code, that in all cases of removal the appointing authority shall furnish the employe its reasons for the order of removal, is mandatory and the failure of the appointing authority to comply with this provision is fatal to such order and the same is a nullity.”

The Court also held:

“The provisions of that section do not confer upon the commission authority to hear an appeal from an order of removal made by an appointing authority where the employe has not been furnished its reasons for the removal.

The state civil service commission in the hearing of an appeal from an order of removal of an employe, under the provisions of Section 486-17a, General Code (106 O. L. 412), is limited to a consideration and determination of the existence of the statutory ground or grounds upon which the order of removal was based by the appointing authority.”

In the opinion, at page 283, the court said:

“The purpose of the civil service law is to continue in positions those who are efficient, faithful and trustworthy. By force of the provisions of the section we have quoted the relator was entitled to hold his position during good behavior and efficient service. The defendant in error could remove him, but there was a limitation on the power to remove. There must have existed one or more of the grounds enumerated in the statute before an order of removal could be made, and, then, *the process for removal as therein prescribed must have been followed.*” (Italics the writer’s.)

At page 284 it was said:

“The law certainly contemplates that the employe is to be advised of the charge against him in terms sufficiently explicit to enable him, if he sees fit, to make and file an explanation.”

On page 285, the court said:

“We are of the opinion that the commission is, in the hearing of the 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. To hold that the state commission can affirm the judgment of the appointing authority, and assign as a reason therefor the existence of a statutory ground for removal other than that which the employe is given opportunity to explain, would be giving to the commission a power which is expressly conferred upon the appointing authority. We do not think it was contemplated that an order of removal can be made by the appointing authority, based upon a statutory ground,

and, after the case is appealed and it appears that such ground did not exist, that then the state commission can affirm the order of removal upon a ground not theretofore brought to the attention of the employe." (Italics the writer's.)

So long as a person is in the employ of the county or city he is entitled to receive compensation therefor and the civil service commission cannot refuse to certify the payroll containing his salary or compensation unless he has been removed from the service as provided by law. To do so would be to give the commission authority to separate him from the payroll, or in other words, substantially to accomplish his removal from office, without giving such employe the benefit of the provisions of Section 486-17a. If the employes referred to have violated the provisions of the civil service law, the appointing authority may and should proceed as provided in said section and remove said persons and notify such employes of the reasons therefor, and the employes may then file an explanation and appeal to the civil service commission for final determination. As pointed out by the Supreme Court in the Brittain case, supra, no other provision is made for the removal of an employe within the classified civil service; and it would seem clearly to follow that the civil service commission has no authority to refuse to honor a payroll containing the names of those employed in the classified civil service of the county or municipality unless such employe has been removed from the service, or suspended, or laid off, as provided by law.

3. As to your third question, I call your attention to Section 486-7 of the General Code which in part reads as follows:

"The state civil service commission shall,

* * *

Fourth: Make investigations, either sitting in banc or through a single commissioner or the chief examiner, concerning all matters touching the enforcement and effect of the provisions of this act and the administrative rules of the commission prescribed thereunder. In the course of such investigations each commissioner and the chief examiner shall have the power to administer oaths and affirmations and to take testimony relative to any matter which the commission has authority to investigate.

* * * "

This section authorizes the civil service commission to make investigations concerning the matter touching the enforcement and administration of the civil service laws. Said section does not confer upon the commission power to investigate and determine whether or not certain employes have violated the provisions of said law, save and except by way of appeal under Section 486-17a, General Code. The commission's power in this connection is found in said Section 486-7, General Code, wherein it is provided that the commission:

"Sixth: Hear appeals from the decisions of appointing officers of persons in the classified service, who have been reduced in pay or position, laid off, suspended, discharged or discriminated against by such appointing authority;"

Relative to the investigations which the civil service commission is authorized to make by subdivision "Fourth" of Section 486-7, supra, Section 486-22 of the General Code provides:

"Whenever a civil service commission shall have reason to believe that any officer, board, commission, head of a department, or person having the power of appointment, lay-off, suspension or removal, has abused such power by making an appointment, lay-off, reduction, suspension, or removal in violation of the provisions of this act, it shall be the duty of the commission to make an investigation, and if it shall find that such violation of the provisions or the intent and spirit of this act has occurred, it shall make a report thereof to the governor, or in the case of a municipal officer or employee to the mayor or other chief appointing authority, who shall have the power to remove forthwith such guilty officer, board, commission, head of department, or person; an opportunity first having been given to such officer, employee or subordinate of being publicly heard in person or by counsel in his own defense, and such action of removal by the governor, mayor or other chief appointing authority shall be final except as otherwise provided herein."

This section provides among other things that when the civil service commission has reasons to believe that an appointing officer has abused its power in the particulars enumerated "it shall be the duty of the commission to make an investigation" and if it, among other things, finds that a violation of "the intent and spirit of this act has occurred," it shall make a report thereof to the governor, except in the cases of municipal officers, in which instance the report shall be made to the mayor or other chief appointing authority. The section further provides that the governor or other chief appointing authority may, after an opportunity has been given to such appointing officer to be heard, remove such person from office and the decision of the governor or other appointing officer shall be final, except in certain instances.

It is clearly the "intent and purpose" of the civil service law that all persons in the classified service, who become actively engaged in politics or otherwise violate the civil service law shall be discharged or suspended by the appointing officer according to the gravity of the offense. Therefore, in the instant case, the Citizens League of Cleveland, if it has information of any violation of the civil service laws by any one in the classified civil service, may bring the same to the attention of the proper appointing officer and if such officer fails or refuses to act, it may report the same to your commission and you may thereafter take such action as you deem proper in accordance with the provisions of Section 486-22, *supra*.

If you find there has been a violation of the civil service laws by any appointing authority, I call your attention to Section 486-28 of the General Code, which reads as follows:

"Whoever, after a rule has been duly established and published by any civil service commission according to the provisions of this act, makes an appointment to office or selects a person for employment contrary to the provisions of such rule, or willfully refuses or neglects otherwise to comply with or conform to the provisions of this act, or willfully violates any of such provisions, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court. If any person so convicted shall hold any public office or place of public employment such office or position shall by virtue of such conviction be rendered vacant."

If you find that the facts ascertained by you warrant a prosecution as provided by said section, you are authorized to prosecute the same by virtue of Section 486-30

of the General Code, which section also provides for legal counsel in connection therewith. This section reads:

"Prosecutions for the violation of the provisions of this act (G. C., Sections 486-1 to 486-31), or the rules and regulations of the state commission established in conformity thereto, shall be instituted by the attorney general or by the state commission acting through special counsel, or by the county prosecutor for the county in which the offense is alleged to have been committed; and prosecutions for violations of this act and the rules and regulations of any municipal commission by any officer or employe of such city, shall be instituted by such municipal commission through the legal department of such city or by such municipal commission acting through special counsel."

In my opinion, the civil service commission not only has authority, but it is its duty, to make an investigation touching upon the enforcement and administration of the provisions of the civil service act, when it has reason to believe that an appointing officer is not complying with the intent and spirit of the act and thereafter report his finding thereon to the governor, or to the mayor or other chief appointing officer of a municipality in case such violation is on the part of a municipal officer.

In conclusion and in answer to the questions stated at the outset of this discussion, it is my opinion that:

1. Persons in the classified civil service, who become candidates for nomination for office, or for members of a party controlling committee, at a primary election, violate the provisions of the civil service act, and for that reason may be discharged from the service in the manner provided by law.

2. The civil service commission may not withhold its approval of that part of the payroll or account for the salary or compensation of a person in the classified civil service, who has become a candidate for nomination for office, or for member of a party controlling committee, at a primary election, except where such person has been removed or suspended by the appointing authority in the manner provided by law.

3. A person in the classified civil service may be removed only as provided in Section 486-17a of the General Code.

4. The civil service commission may make investigations to ascertain whether or not the civil service law has been violated, and thereafter proceed as authorized in Sections 486-22 and 486-28 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2804.

CLERK OF COURT—BOND EXPIRES WITH TERM OF OFFICE—FAILURE TO GIVE NEW BOND ON RE-ELECTION CREATES A VACANCY— FILLED BY APPOINTMENT.

SYLLABUS:

An official bond given by a person who was elected in 1924 to the office of Clerk of the Common Pleas Court of a county in this state, for the term of said office which commenced on the first Monday of August, 1925, is not effective for the purpose of