

2621.

APPROVAL, BONDS OF VILLAGE OF EUCLID, CUYAHOGA COUNTY,
\$10,000.00.

COLUMBUS, OHIO, June 29, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2622.

CIVIL SERVICE LAW—AUTHORITY OF STATE CIVIL SERVICE COMMISSION TO DESIGNATE MUNICIPAL COMMISSION AS ITS AGENT FOR CERTAIN SPECIFIC MATTERS.

SYLLABUS:

Section 486-5, General Code, as found in amended senate bill No. 51, passed by the last general assembly, authorizes the state civil service commission to designate from time to time the municipal civil service commission of the largest municipality of a county as its agents for certain specific matters arising in said county. Such agency abates with the completion of each such affair and such municipal civil service commission may upon request of the state civil service commission act as a trial board to hear appeals from an order of removal made against an employe within said county.

COLUMBUS, OHIO, June 30, 1925.

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

GENTLEMEN:— Permit me to acknowledge the receipt of your communication of recent date in which you ask the advice of this department on the following:

"We are attaching hereto a copy of amended senate bill No. 51 passed by the recent general assembly and which was filed in the offices of the secretary of state on April 1st.

"You will note that part—'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,' etc.

"We desire your opinion upon the following: In case this commission designates, for example, the local civil service commission of Cleveland, Ohio, as its agent within Cuyahoga county for the purpose of carrying out the provisions of the civil service law within said county, including in its designation the statement that such local commission is to continue as the agent of the state commission only so long as the state commission believes the local commission to be properly administering the civil service law so

far as it applies to the county—may this commission at any time thereafter withdraw such designation of the local commission as its agent in carrying out any or all of the provisions of the law within such county?

“Also during the time such local commission is acting as agent of the state commission, can hearings on appeals of classified employes removed from their positions be appealed from the decision of the local commission and heard by the state commission?”

Amended senate bill No. 51 modifies section 486-5, General Code, and repeals the original section. The former section and the new one relates to the duties of the state civil service commission. The new matter found in amended section 486-5, General Code, reads 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; and such civil service commissioners shall each receive for this work such reasonable compensation as the boards of county commissioners may determine, and the board of county commissioners of such county, during the time such arrangement shall continue, shall appropriate each year, to be paid out of the county treasury into the treasury of such municipality, a sum sufficient to meet the county’s portion of the cost of the work as determined by the number of employes in such classified service.”

A comparison of the original section with the amended section shows that there is no change other than the proviso above set forth.

A proviso is a clause added to a section or part thereof, which introduces a condition or limitation upon the operation of an enactment or makes special provision for cases excepted from the general operation of the law, or qualifies or restrains its generality, or excludes some possible ground or misinterpretation of its extent. A proviso to a statute or to a section thereof, is to restrain or qualify the provision immediately preceding it. Hence, it will be confined to the section to which appended unless it clearly was intended to have a wider scope. Provisos are ordinarily strictly construed. *Black Interpretation of Laws*, pp 270, 273 and 276.

This proviso authorizes power to make a certain local civil service commission the agent of the state civil service commission for the purposes set out therein, to-wit: for the purpose of carrying out such provisions of *this act*, within said counties, as the state civil service may designate from time to time.

The phrase “provisions of this act” must refer to the whole of the law creating and setting out the powers and duties of the state civil service commission that may happen to be from time to time applicable to acts or conditions transpiring or existing in the county of the agent designated by the state civil service commission.

The statement “may designate from time to time” implies that the agency is not considered to be continuing but is created for certain events or matters happening or existing in the county of the agent, and implying the lapsing of such agency upon the termination of the agent’s disposition of such matters.

The power to appoint an agent carries, undoubtedly, the power to discharge the agent and terminate such relationship at the pleasure of the principal.

Hence, concerning your first inquiry, it is evident that a strict construction of this proviso requires the appointment of an agent for each affair, act or inquiry, the

principal decides to turn over to the consideration of said agent upon the completion of which the relationship of agency is at an end.

Concerning your second question, you are advised that section 486-17a General Code, authorizes the state civil service commission to:

“Hear, or appoint a trial board to hear, such appeal, etc. * * *.”

So, since the new section supplies power to appoint a local municipal civil service commission as agent for carrying out the provisions of this act, and the act already authorizes appointment of a trial board to hear appeals, it follows the commission may designate the agent it is authorized to appoint in amended section 486-5; General Code, as such trial board to hear such appeals.

You are therefore, advised, and such is the opinion of this department, that the designation of a municipal civil service commission as agent is for a specific matter occurring in the county where the municipality is located and the appointment is made from time to time as the state civil service commission may desire; and further that said designated agent may hear an appeal from an order of removal as a trial board when such duty is imposed upon it as agent of the state civil service commission.

Respectfully,

C. C. CRABBE,
Attorney General.

2623.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN SUMMIT AND BUTLER COUNTIES

COLUMBUS, OHIO, June 30, 1925.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2624.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND BOYAJOHNS & BARR, OF COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF THE FIRST AND SECOND STORIES, SHOP BUILDING, MIAMI UNIVERSITY, OXFORD, OHIO, AT COST OF \$3,400.00. SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, June 30, 1925.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the state of Ohio, acting by the department of highways and public works, and Boyajohn &