

In this connection, however, I deem it proper to point out that the Director of Public Welfare, or the other proper officers in charge of a state institution, at which prisoners from the Ohio State Reformatory are employed, would be empowered to make reasonable orders, rules and regulations prohibiting the employes of the institution from selling to or otherwise carrying on business transactions with prisoners.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2545.

ELECTION—EMPLOYES IN CLASSIFIED CIVIL SERVICE MAY NOT
HOLD OFFICE AS CLERK OF BOARD OF DEPUTY STATE SUPER-
VISORS OF ELECTIONS.

SYLLABUS:

A person holding an office or position in the classified civil service of the state, or of a county, city or city school district, may not at the same time hold the office of member or clerk of the board of deputy state supervisors and inspectors of elections, or board of deputy state supervisors of elections, as the case may be, without thereby violating the provisions of Section 486-23, of the General Code.

COLUMBUS, OHIO, September 5, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your communication of recent date in which you request my opinion upon a question therein stated. Your communication reads as follows:

“We desire to respectfully request your opinion whether, in accordance with the provisions of Section 486-23 regarding political activity, a clerk or member of the Board of Elections may act in this capacity and at the same time retain his position in the classified service of the state, counties, cities or city school districts thereof.”

By the term “Board of Elections” as used in your communication, you have reference of course to the board of deputy state supervisors and inspectors of elections, or the board of deputy state supervisors of elections in a county, as the case may be, depending upon whether such county contains a city where annual general registration of the electors is required by law, or contains two or more cities in which registration is required by law. In either event, the members of such board are appointed from the two dominant political parties upon the recommendation of the county executive committees of such respective political parties. In other words, the appointment of a member of such board depends upon the fact that he belongs to one of the two dominant political parties, and that he has been recommended for appointment by the county executive committee of the party to which he belongs. Sections 4789, 4790, 4804 and 4805, General Code. The clerk of the board of deputy state supervisors and inspectors of elections may be selected by the majority vote of the members of such board. If not so selected the clerk is appointed by the state supervisor and inspector of elections from the list of persons voted on by the members of the board.

Section 4795, General Code. The clerk of the board of deputy state supervisors of elections may likewise be selected by the vote of a majority of the members of the board and if not so selected such clerk shall be selected by lot from two persons of opposite politics to be nominated by the deputy supervisors, the two deputies of the same politics to name one candidate for clerk, and the two deputies of opposite politics to name the other.

Besides the particular duties relating to the conduct of elections imposed upon the members of such board by other statutory provisions, the general duties of members of the board are defined by Section 4819, General Code, as follows:

"The deputy state supervisors for each county shall advertise and let the printing of the ballots, cards of instruction and other required books and papers to be printed by the county; receive the ballots from the printer, and cause them to be securely sealed up in their presence in packages, one for each precinct, containing the designated number of ballots for each precinct, and make the necessary indorsements thereon as provided by law; provide for the delivery of ballots, poll books and other required books, and papers at the polling places in the several precincts; cause the polling places to be suitably provided with booths, guard rails and other supplies, as provided by law, and provide for the care and custody of them during the intervals between elections; receive the returns of elections, canvass them, make abstracts thereof, and transmit such abstracts to the proper officers at the times and in the manner provided by law, and issue certificates to persons entitled to them."

In the case of *State of Ohio ex rel. vs. Craig et al.*, 21 O. C. C. 175, affirmed by the Supreme Court without opinion 64 O. S. 588, it was held that the members of the board of deputy state supervisors of elections of a county and the clerk of such board were officers, and that their right to their respective offices could be tested only by an action in quo warranto.

Section 486-23, General Code, referred to in your communication, provides:

"No officer, employe or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall * * * take part in politics other than to vote as he pleases and to express freely his political opinions."

The section of the General Code quoted provides that no officer or employe in the classified service shall take part in politics other than to vote as he pleases and to express freely his political opinions.

In its broad sense, the term "politics" may be defined as "the science and art of government; the science dealing with the organization, regulation and administration of a State in both its internal and external affairs." *Scown vs. Czarnecki*, 264 Ill. 305, 313. For the purposes of the question submitted in your communication the term may perhaps be adequately defined as including the activities relating to the election or appointment of persons to public office or position, and to the activities by which the duties of such public office or position are performed.

In an opinion under date of April 24, 1914, Annual Report of the Attorney General for 1914, page 509, this department construing and applying the above quoted provisions of Section 486-23, General Code, held that persons in the classified civil service could not be candidates for nomination to public office at primary elections nor could they be candidates for election to public office at a general election without resigning from their positions in the classified civil service.

In the former opinion of this department above referred to it is said:

"This section provides that no officer or employe in the classified service shall 'take part in politics other than to vote as he pleases, and to express freely his political opinions.'

This provision prescribes the extent to which an officer or employe may take part in politics. He may vote as he pleases. He may express freely his political opinions. He is not given the right to become a candidate at a primary or at an election for officers.

The word 'politics' is defined at page 909 of volume 31 of Cyc. as follows:

'Politics'. In its true original meaning, a term which comprehends everything that concerns the government of the country.'

Primaries and elections are necessary in order to secure officers to carry on the government, and a person who is a candidate at a primary or at an election would be taking part in politics within the meaning of Section 23 of the civil service act.

In the common acceptance of the meaning of the term 'politics' it means activity in government and activity in selecting candidates for office and the election of officers.

Therefore, 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."

In an opinion of this department under date of March 3, 1916, Opinions of the Attorney General for 1916, Vol. I, page 375, it was held that the provisions of Section 486-23, General Code, prohibit a person holding a position in the classified civil service from being a candidate for an elective political office. In said opinion, referring to the provisions of said section of the General Code above quoted, it was said:

"The prohibitions in this statute are intended to prevent persons in the classified service from engaging in any conduct which is incompatible with an independent and wholly disinterested service to the state. The Legislature has the absolute right to determine upon what conditions any citizen shall hold a public office or employment. As one of the conditions for holding an office or employment in the classified service it is prescribed, as above noted, that the incumbent thereof shall not take part in politics. These conditions, therefore, prohibit an officer or employe in the classified service from engaging in any act or conduct which may be said to be taking a part in politics. It does not require an argument to sustain the contention that an active candidate for an elective office is taking a part in politics because the things for which a candidate stands under such circumstances and upon which he seeks support are of the very essence of politics and this is so whether such candidate represents a party in his campaign for such office or stands upon a platform of his own.

I am of the opinion, therefore, that an active candidate for an elective office is taking a part in politics within the prohibition of the statute quoted and that if he is at the same time holding an office or employment in the classified civil service he should resign therefrom or he would be subject to prosecution as provided by Section 486-28, G. C., as amended 106 O. L. 417."

In Opinion No. 2060 of this department under date of May 4, 1928, it was held that:

"Under the provisions of Section 486-23, General Code, a person employed in the classified civil service of the state may not legally be a candidate for the office of member of council of a village, nor hold such office by election or appointment."

The provisions of Section 486-23, General Code, in stating what a person holding an office or position in the classified civil service may do, quite effectually indicates what he can not do in so far as the question submitted in your communication is concerned. Aside from the fact that elections belong to the political branch of the government and that the duties of an office relating to the conduct of elections are political in their nature (*State ex rel vs. Graves*, 90 O. S. 311), it is quite manifest that a person holding the office of member of a board of deputy state supervisors of elections or holding the office of clerk of such board, and performing the duties of said respective offices, is doing something more in the way of political activity than voting and expressing his political opinions.

By way of specific answer to the question presented in your communication therefore, I am of the opinion that a clerk or member of the board of deputy supervisors and inspectors of elections, or of the board of deputy supervisors of elections of a county may not under the provisions of Section 486-23, General Code, retain his position in the classified service of the state, counties, cities or city school districts thereof.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2546.

APPROVAL, BONDS OF SELMA RURAL SCHOOL DISTRICT, CLARK COUNTY, OHIO—\$23,000.00.

COLUMBUS, OHIO, September 5, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2547.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND PITTSBURGH-DES MOINES STEEL CO., PITTSBURGH, PA., FOR CONSTRUCTION OF WATER TOWER, DAYTON STATE HOSPITAL, SHAKER FARM, DAYTON, OHIO, AT AN EXPENDITURE OF \$4,170.00—SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, September 5, 1928.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Dayton State Hospital, Shaker